

Federal Court



Cour fédérale

**Date: 20220525**

**Docket: IMM-1445-20**

**Citation: 2022 FC 758**

**Ottawa, Ontario, May 25, 2022**

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

**BETWEEN:**

**EKENEM MADU  
CHIKA PEACE MADU  
SOMTOCHUKWU SAMUEL NNA MADU  
CHIMEMELA JUDAH NNA MADU**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] The applicants, Mr. Ekenem Madu, his wife, Ms. Chika Peace Madu, and their two children, who are 11 and 8 years old [Applicants], are citizens of Nigeria who seek judicial review of a decision of the Refugee Appeal Division [RAD] confirming a decision of the Refugee Protection Division [RPD] that denied their claim for refugee protection. Mr. Madu

asserts that his life is at risk in Nigeria because he cannot obtain adequate medical care for his heart condition. In addition, the Applicants claim that they fear returning to Nigeria because they were attacked on two separate occasions at their home by unknown assailants for unknown reasons.

[2] The RAD found that Mr. Madu presented no evidence to establish that any lack of medical care was for reason of his race, religion, nationality, political opinion or membership in a particular social group, thus no clear link to a Convention ground under section 96 of the *Immigration and Refugee Protection Act, SC 2001, c 27 [Act]*. The RAD concluded that Mr. Madu was excluded from the definition of a person needing protection under subparagraph 97(1)(b)(iv) of the Act as the risk he alleged was related to inadequate medical care in Nigeria. As regards the two attacks at their home, the attackers were not identified and the reason for the attacks was not explained. In addition, the RAD found that the documents submitted to support the claim of the attacks, in particular the police reports, were fraudulent.

[3] Having reviewed the matter and heard the parties, I find nothing unreasonable in the RAD's determination. Therefore, I dismiss the present application for judicial review.

## II. Context and underlying decisions

[4] Mr. Madu was born in Kaduna, in the northern part of Nigeria which is predominantly Muslim. In the mid-2000s, Islamic fundamentalist groups regularly targeted the city of Kaduna, where many Christians lived. Mr. Madu claims that the police and the army were unwilling to protect Christians because they themselves were mostly Muslim. Eventually, the Islamic

fundamentalist groups burnt down Mr. Madu's property in 2004, and he decided to move to Lagos in 2007 to start afresh. There, he met and married Ms. Madu in 2010. Although these events provide background information, they are not related to the Applicants' refugee claim.

[5] Around 2013, Mr. Madu developed a heart condition, diagnosed as an aortic valve rupture, that required him to have open-heart surgery for a valve replacement. However, the hospitals in Nigeria did not have the equipment to perform the required procedure; therefore, Mr. Madu raised money through his church to travel to India in 2016, where he had the surgery. He claims that he has since struggled to pay for all the medical appointments and medication that he needed post-surgery. In 2017 and 2018, Mr. Madu travelled to the United States, hoping to access the required medical care, but to no avail as he did not have sufficient funds. He claims that while he was in the United States in March 2018, five unidentified armed men attacked Ms. Madu and their children at their house; they searched the house and questioned them about Mr. Madu's whereabouts, for no apparent reason. The Applicants claim that they reported the event to the police and to the chairperson of their gated community; the police went to their home to take Ms. Madu's report and various photographs, and the security within the family's gated community was increased. Life seemed to go back to normal; however, the next month, in April 2018, four armed men again attacked Ms. Madu and her children at their home, having entered the gated community disguised as doctors who were supposed to check on Ms. Madu on account of her blood pressure issues. During this second attack, Ms. Madu claims that the assailants enquired as to the whereabouts of Mr. Madu, again for reasons unknown, but this time while holding the children at gunpoint. Terrified, she informed them that her husband was in the United States. Once again, she reported the events to the police, who sent the same officers to

question her. According to Ms. Madu, the police advised them not to return to their home, so Ms. Madu and her children hid at their pastor's house. After a few days, the pastor suggested that Ms. Madu and the children join Mr. Madu in the United States, so the family returned to their house for 10 days – the children continued going to school during that time – before leaving for the United States on April 22, 2018. The Applicants entered Canada on April 25, 2018. Neither the reason for the attacks nor the assailants were identified.

[6] The RPD found that the determinative issue was the credibility of the Applicants' testimony and of the documents that they submitted. In the end, the RPD determined that the police reports submitted by the Applicants to support their claim of the attacks were fraudulent, thus undermining the Applicants' credibility. The RPD found that the hospital documents from India were also fraudulent and determined that on a balance of probabilities, Mr. Madu had never undergone open-heart surgery or any treatment in India. In any event, the RPD determined that Mr. Madu's medical condition fell to be determined under subparagraph 97(1)(b)(iv) of the Act. On the basis of its negative credibility findings, the RPD rejected their claim.

[7] On February 10, 2020, the RAD dismissed the appeal. On the basis of new evidence from medical practitioners in Montreal, the RAD found that the RPD had erred in its determination regarding Mr. Madu's medical condition and his operation in India, which led to the finding by the RPD that his credibility was negatively affected. Nevertheless, the RAD agreed with the RPD that the Applicants' overall allegations were not credible.

[8] First, the RAD agreed that there was no nexus between Mr. Madu's heart condition and his claim for refugee protection, and it also agreed that the inability of Nigeria to provide adequate medical care excludes him from protection under subparagraph 97(1)(b)(iv) of the Act. Second, and although for different reasons than those of the RPD, the RAD found that the police reports were not authentic, particularly because of the tremendous similarities – near-identical passages – between the police reports dated April 2019 produced in support of their claim and Ms. Madu's Basis of Claim Form [BOC Form] prepared in May 2018, nearly one year earlier, without any reasonable explanation as to why. Third, the RAD also agreed with the RPD that the inconsistency between Ms. Madu's testimony and her Schedule A regarding her employment history affected her credibility. Although this inconsistency was not central to the Applicants' claim for protection, the RAD found that it was more than merely peripheral.

[9] The RAD also determined that the RPD was correct in finding that Ms. Madu's behaviour – returning to her home and sending the children to school following the second attack – was inconsistent with the behaviour of a person who feared for her life. Finally, and although the RAD found that the RPD erred in ignoring letters provided by the Applicants, the content of the letters was insufficient to overcome the remaining negative credibility findings. Therefore, the RAD found that the Applicants' allegations were not credible, and dismissed their appeal.

### III. Issue and standard of review

[10] The sole issue in this application for judicial review is whether the RAD's decision is unreasonable: specifically, whether the RAD erred in not referring the matter to the RPD for redetermination, whether the RAD erred in the assessment of the Applicants' credibility, and

whether the RAD erred by not holding an oral hearing and by not providing the Applicants with an opportunity to make further submissions on the new issues of credibility.

[11] The parties agree that the applicable standard of review for the merits of the RAD's decision is reasonableness, which is concerned with the existence of justification, transparency and intelligibility in the reasoning process of the decision-maker (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 99, 101 [*Vavilov*]; *Sunday v Canada (Citizenship and Immigration)*, 2021 FC 266 at para 10).

#### IV. Analysis

##### A. *The RAD did not err by not referring the matter to the RPD for redetermination*

[12] The Applicants did not contest any of the RAD's findings, but argued only one issue before me: they submit that the RAD's decision is not based on rational reasoning, as the RAD could not, on the one hand, find that the RPD committed several significant errors in its credibility assessment and, on the other hand, dismiss the appeal rather than send the matter back to the RPD for redetermination. The Applicants cite no case law for their proposition that when the errors identified by the RAD in an RPD decision are as significant as in this case, as they argue, the RAD must send the matter back for redetermination or be at risk of finding its discretion fettered and of having its own determination tainted with the same reversible errors as those found in the RPD decision.

[13] I cannot agree with the Applicants. Section 111 of the Act provides the criteria for the RAD to remit the matter to the RPD:

**Decision**

**111(1)** After considering the appeal, the Refugee Appeal Division shall make one of the following decisions:

- (a) confirm the determination of the Refugee Protection Division;
- (b) set aside the determination and substitute a determination that, in its opinion, should have been made; or
- (c) refer the matter to the Refugee Protection Division for re-determination, giving the directions to the Refugee Protection Division that it considers appropriate.

**Referrals**

**(2)** The Refugee Appeal Division may make the referral described in paragraph (1)(c) only if it is of the opinion that

- (a) the decision of the Refugee Protection Division is wrong in law, in fact or in mixed law and fact; and
- (b) it cannot make a decision under paragraph 111(1)(a) or (b) without hearing evidence that was presented to the Refugee Protection Division.

**Décision**

**111(1)** La Section d'appel des réfugiés confirme la décision attaquée, casse la décision et y substitue la décision qui aurait dû être rendue ou renvoie, conformément à ses instructions, l'affaire à la Section de la protection des réfugiés.

**Renvoi**

**(2)** Elle ne peut procéder au renvoi que si elle estime, à la fois :

- a) que la décision attaquée de la Section de la protection des réfugiés est erronée en droit, en fait ou en droit et en fait;
- b) qu'elle ne peut confirmer la décision attaquée ou casser la décision et y substituer la décision qui aurait dû être rendue sans tenir une nouvelle audience en vue du réexamen des éléments de preuve qui ont été présentés à la Section de la protection des réfugiés.

[14] In short, when the RAD finds that the RPD erred, it must provide a final determination by setting aside the decision and substituting its own determination of the merits of the claim, and

“[i]t is only when the RAD is of the opinion that it cannot provide such a final determination without hearing the oral evidence presented to the RPD that the matter can be referred back to the RPD for redetermination” (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at para 103). Here, having identified the errors in the RPD decision, the RAD went ahead and conducted its own independent assessment of the evidence. There is no indication that the RAD was unable to come to its own conclusion based upon the evidence, and I therefore fail to see why it had to refer the matter back to the RPD for redetermination.

B. *The RAD did not err in the assessment of the Applicants’ credibility*

[15] Although the remaining issues raised by the Applicants in their memorandum were not argued before me, I should nonetheless address them in these reasons as they were raised in written submissions. In this case, the RAD found that the RPD erred in finding that the Applicants’ overall credibility was negatively affected by Mr. Madu’s medical assertions and by his omission to indicate in his Schedule A the address where he resided when he was in the United States in 2017. The RAD further found that the RPD erred by not mentioning the letters provided by the Applicants in its reasons. However, the RAD found that these erroneous findings were not sufficient to outweigh the remaining negative credibility findings. Having reviewed the evidence, the RAD found that the RPD was correct in drawing negative credibility inferences from the police reports, from the inconsistent declarations made by Ms. Madu regarding her employment history, and from Ms. Madu’s behaviour following the purported attacks, which was inconsistent with that of a person who feared for her life and for the lives of her children.



[16] The Applicants argue that the RAD conducted a narrow assessment of Mr. Madu's medical condition by focusing on whether the health condition had a nexus to a Convention ground and by not engaging with the profile of the Applicants as a family with a member suffering from health problems. I do not agree with the Applicants when they assert that the RPD's and RAD's "allusion to section 97(1)(b) [of the Act] was a needless journey of discovery". Mr. Madu claimed in his BOC Form that he could not return to Nigeria because the medical care is inadequate and the medications he needs to treat his heart condition are not available. Subparagraph 97(1)(b)(iv) of the Act provides that the risk to which a person claiming protection is subjected should not be caused by the inability of their country of nationality to provide adequate health or medical care. The RAD also found that the Applicants did not allege or provide any evidence that the lack of adequate medical care for Mr. Madu in Nigeria was a result of, or made worse by, any personal characteristics or beliefs on his part in line with a Convention ground under section 96 of the Act. Therefore, it was not unreasonable for the RAD to conclude that Mr. Madu was excluded from the definition of a person in need of protection.

[17] In addition, the Applicants argue that the RAD engaged in a microscopic assessment of the police reports. The RAD agreed with the RPD that the police reports were fraudulent because they were strikingly similar to what Ms. Madu had written in her BOC Form nearly a year earlier. Having considered the matter, I am not persuaded that the findings of the RAD were unreasonable given Ms. Madu's inconsistent testimony when asked to explain those striking similarities. It was certainly open to the RAD to conclude that the police reports were prepared by the Applicants after the filing of Ms. Madu's BOC Form and that they were therefore fraudulent.

[18] Finally, the Applicants take issue with the RAD's negative credibility findings in relation to Ms. Madu's testimony about her employment history as well as her behaviour after the second alleged attack.

[19] Although this issue is not central to the Applicants' claim for protection, Ms. Madu wrote in her Schedule A that she worked for a bank in Lagos from 2007 to 2012, that she was a housewife from September 2012 to January 2014, that she engaged in "petty" trading from February 2014 to January 2016, and that she was unemployed from January 2016 until she left Nigeria. However, in her testimony before the RPD, Ms. Madu stated that she had worked for a second bank between 2012 and 2018 and that she had stopped working after the attacks. The Applicants argue that an inconsistency between a statement found in Schedule A and an applicant's testimony is not sufficient to lead to a negative credibility finding (*Chikadze v Canada (Citizenship and Immigration)*, 2020 FC 306 at para 21 [*Chikadze*]) and that the RAD should have adopted a cautionary approach when assessing credibility as there is a presumption of truthfulness when a refugee claimant swears to the truth of certain allegations (*Vodics v Canada (Minister of Citizenship and Immigration)*, 2005 FC 783 at paras 10-11; *Maldonado v Minister of Employment and Immigration*, [1980] 2 FC 302 at 305 (CA)).

[20] The Applicants further argue that the RAD erred by evaluating Ms. Madu's behaviour after the second alleged attacks through a Western lens, as her behaviour was due to limited choices for escape. Ms. Madu testified that she and the children hid at their pastor's house for one week and returned home for 10 days before leaving Nigeria. She testified that while they were back home, the children went to school and they relied on additional security measures at

their community gate to ensure their protection. The RAD found that Ms. Madu's behaviour was inconsistent with that of a person who fears for her life:

[48] I agree with the RPD here. According to Ms. Madu, unknown assailants had twice attacked her home and had threatened her and her children's lives at gunpoint. According to her allegations, they were so sophisticated and determined that they found out that she was expecting her doctor and disguised themselves as physicians to get past the security that had been put in place to protect her and her family. Moreover, after the second attack the police allegedly even told Mr. Madu not to come back to protect them. Given all this, coming out of hiding, relying while home on only the Close gate security, and sending the children to school, even by bus, is, in my opinion, inconsistent with the fear caused by the alleged attacks. I find that the RPD was correct in this matter.

[21] The Minister submits that the Applicants did not specifically address before the RAD the issues of Ms. Madu's lack of subjective fear and of the inconsistencies regarding her employment history, and that this Court should therefore not consider these two issues raised now on judicial review (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 23-25 [*Alberta Teachers' Association*]; *Efe-Agbonaye v Canada (Citizenship and Immigration)*, 2018 FC 1263 at para 19 [*Efe-Agbonaye*]; *Abdulmaula v Canada (Citizenship and Immigration)*, 2017 FC 14 at para 15 [*Abdulmaula*]). I do not agree with the Minister. The issues were clearly addressed by the RAD who saw them as important enough to consider in assessing the Applicants' credibility. As such, I see nothing wrong with the Applicant's addressing them on judicial review of the RAD's decision. The general principle is that the reviewing court should not address new arguments that could have been, but were not, raised before the RAD (*Alberta Teachers' Association* at para 23). However, unlike the situations in *Efe-Agbonaye* and *Abdulmaula*, the Applicants are not arguing entirely new grounds to find that the RAD decision is unreasonable. Clearly credibility was an issue before the RAD,

and the RAD saw fit to address the findings of the RPD regarding the issues of Ms. Madu's subjective fear following the purported attacks and of the inconsistencies regarding her employment history. That said, I do not agree with the Applicants' arguments. I accept that the RAD should be cautious before faulting an appellant for inconsistencies, omissions or details found in forms signed upon his or her arrival in Canada because of the far-from-ideal circumstances surrounding the taking of those statements (*Chikadze* at para 21, citing *Guyen v Canada (Citizenship and Immigration)*, 2018 FC 38 at paras 39-42), however contradictions or discrepancies in the evidence of a refugee claimant are a well-accepted basis for a finding of lack of credibility (*Yu v Canada (Minister of Citizenship and Immigration)*, 2003 FCT 720). The RAD was entitled to rely on these contradictions and discrepancies for its negative credibility finding related to Ms. Madu's employment history. The RAD provided reasons in "clear and unmistakable terms" for this negative credibility finding and referred to specific examples of inconsistencies and contradictions (*Hilo v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 228 (FCA) (QL)). As a result, I find nothing unreasonable with its findings on this issue.

C. *The RAD did not err by not holding an oral hearing*

[22] The Applicants submit that the RAD should have afforded them an oral hearing or an opportunity to provide submissions to address the new issues of credibility raised by the RAD.

[23] Regarding the issue of whether the RAD erred in not holding an oral hearing, the applicable standard of review is reasonableness, as none of the situations in which the presumption of reasonableness can be rebutted apply (*Vavilov* at para 17). The decision to hold a

hearing under subsection 110(6) of the Act is based on the RAD's interpretation of its constitutive legislation (*Al-Abayechi v Canada (Citizenship and Immigration)*, 2018 FC 360 at para 11). Subsection 110(6) provides that the RAD may hold a hearing if there is new evidence that raises a serious issue with respect to the credibility of the person who is the subject of the appeal, and that is central to the decision. In this case, the RAD admitted three documents as new evidence under subsection 110(4) and found them to be credible. Therefore, the RAD considered that there was no need to hold an oral hearing. I find nothing unreasonable with the RAD's application of subsection 110(6).

[24] Regarding the opportunity to provide new submissions to address the new issues of credibility raised by the RAD, the Court must assess whether the Applicants knew the case to meet and had a full and fair chance to respond (*Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 56). I do not agree with the Applicants that the RAD raised new credibility issues. The Applicants' credibility was already at issue before the RPD, and credibility was the only issue that was raised in the appeal to the RAD. The RAD simply reviewed the findings made by the RPD. Furthermore, even if the RAD had found an additional basis on which to question the Applicants' credibility using the evidentiary record before the RPD, the RAD would not have been obligated to provide them with an opportunity to present new submissions, as they were already on notice that credibility was a live issue based on the RPD's decision (*Oluwaseyi Adeoye v Canada (Citizenship and Immigration)*, 2018 FC 246 at para 13).

V. Conclusion

[25] I would dismiss the application for judicial review.

**JUDGMENT in IMM-1445-20**

**THIS COURT'S JUDGMENT is as follows:**

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Peter G. Pamel”

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Judge

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

**DOCKET:** IMM-1445-20

**STYLE OF CAUSE:** EKENEM MADU, CHIKA PEACE MADU,  
SOMTOCHUKWU SAMUEL NNA MADU,  
CHIMEMELA JUDAH NNA MADU v THE MINISTER  
OF CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** APRIL 25, 2022

**JUDGMENT AND REASONS:** PAMEL J.

**DATED:** MAY 25, 2022

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