Federal Court  Cour fédérale

**Date: 20220704**

**Docket: IMM-6449-21**

**Citation: 2022 FC 982**

**Ottawa, Ontario, July 4, 2022**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**KAFAYAT MOSUNMOLA AJIHUN OLALERE-MARTINS**
**KISSMAT OMOJOJUOLA ABIKE MARTINS**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

## JUDGMENT AND REASONS

[1] This is an application for judicial review of a negative Pre-Removal Risk Assessment (PRRA), dated August 6, 2021. The Principal Applicant (PA) and her daughter, citizens of Nigeria, argue the PRRA Officer failed to properly consider the evidence of their risk in Nigeria.

[2] For the reasons that follow, this judicial review is dismissed as the decision of the PRRA Officer is reasonable.

## I. Background

[3] The PA claims that she and her daughter fled to Canada in 2016 after the PA's mother-in-law wanted her daughter to undergo female genital mutilation. The PA also claims that her husband's family have accused her of being a witch, and she has been physically assaulted by her mother-in-law.

[4] Their refugee claim was denied by the Refugee Protection Division. Their appeal to the Refugee Appeal Division (RAD) was dismissed and the RAD determined that the Applicants had a viable internal flight alternative (IFA) in Ibadan. Although the Applicants submitted that they had previously relocated and hid in Ibadan, the RAD determined the Applicants had not established this on a balance of probabilities.

[5] The Applicants applied for a PRRA and submitted new evidence, including a letter from the PA's brother and updated country condition evidence.

## II. PRRA Decision Under Review

[6] The PRRA Officer accepted the letter from the PA's brother and country condition documents as new evidence. With respect to the brother's letter, the Officer held it had minimal probative value, stating: "[i]t speaks of events in a general manner"; "lacks any dates that would

allow me to determine when the events discussed in the statement took place"; and, "the applicants do not provide any contact information for the author of the statement".

[7] The Officer also considered counsel's statement that the Applicants claim was rejected because of the IFA and not because of a finding of credibility. However, the Officer noted that the RAD found that the PA lacked credibility with respect to her claim that she went into hiding in Kwara or Oyo state. The Officer held the Applicants had not addressed the credibility findings of the RPD or RAD.

[8] The Applicants also submitted the PA's narrative that had been submitted to the RPD. The Officer held this "reiterates the same facts while providing no new personalized probative evidence to support the statements made".

[9] The Officer refused the PRRA application concluding that the Applicants faced no more than a mere possibility of persecution on Convention grounds, and that the Applicants had not established on a balance of probabilities a danger of torture, risk to life, or a risk of cruel and unusual punishment on return to Nigeria.

## III. Issue and Standard of Review

[10] The only issue for consideration is the reasonableness of the decision of the PRRA Officer.

[11] In reviewing a decision on a reasonableness standard, the Court asks "whether the decision 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" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 99 [*Vavilov*]).

## IV. Analysis

### A. *Is the PRRA Officer's Decision Reasonable?*

[12] The Applicants argue that the PRRA Officer erred by deferring to the RAD's credibility findings and by failing to conduct an independent assessment of the evidence. The Applicants also argue that the PRRA Officer erred in failing to admit new evidence, and failed to properly assess the proposed IFA.

[13] As a starting point, it is helpful to situate the purpose of a PRRA.

[14] Section 113 of the *Immigration and Refuge Protection Act*, SC 2001, c 27, states:

> **Consideration of application**
>
> **113** Consideration of an application for protection shall be as follows:
>
> **(a)** an applicant whose claim to refugee protection has been rejected may present only new evidence that arose after the rejection or was not reasonably available, or that the applicant could not reasonably have been expected in the circumstances to have presented, at the time of the rejection

[15] As noted in *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385:

> A PRRA application by a failed refugee claimant is not an appeal or reconsideration of the decision of the RPD to reject a claim for refugee protection. Nevertheless, it may require consideration of some or all of the same factual and legal issues as a claim for refugee protection. In such cases there is an obvious risk of wasteful and potentially abusive relitigation. The IRPA mitigates that risk by limiting the evidence that may be presented to the PRRA officer (at para 12).

[16] Further in *Canada (Citizenship and Immigration) v Singh*, 2016 FCA 96 [*Singh*], the court differentiated the role of the RAD and the role of a PRRA Officer:

> The fact that the RAD is a quasi-judicial administrative tribunal, as opposed to the PRRA officer, who is an employee of the Minister, acting within his or her employer's discretion, must obviously be taken into consideration. The same applies to the fact that the RAD has an appellate function and has the authority to set aside the RPD's decision and substitute that which should have been made, while the PRRA officer must show deference and does not sit in appeal of the RPD's decision and his or her only mission is to assess any new pre-removal risk. These distinctions are not determinative of the admissibility of new evidence, however, and I note that the trial judge did not specify how the distinctive role and status of the RAD and the PRRA officer should affect the criteria for admitting evidence or how it would allow for the negation of the presumption to which I referred above.
>
> As for the fourth implicit criterion identified by this Court in *Raza*, namely, the materiality of the evidence, there may be a need for some adaptations to be made. In the context of a PRRA, the requirement that new evidence be of such significance that it would have allowed the RPD to reach a different conclusion can be explained to the extent that the PRRA officer must show deference to a negative decision by the RPD and may only depart from that principle on the basis of different circumstances or a new risk. The RAD, on the other hand, has a much broader mandate and may intervene to correct any error of fact, of law, or of mixed fact and law. As a result, it may be that although the new evidence is not determinative in and of itself, it may have an impact on the RAD's overall assessment of the RPD's decision (at paras 42, 47).

[17] Here, and in keeping with *Singh*, it was appropriate for the PRRA Officer to defer to the credibility findings of the RAD.

[18] The Applicants argue the PRRA Officer erred in rejecting the PA's statement and the brother's letter by finding that these documents were not new evidence pursuant to s 113(a) of the IRPA. However, with respect to the PA's statement, although not accepted as new evidence, the Officer states that this evidence was considered. Likewise, with respect to the brother's letter, the PRRA Officer explicitly accepts and assesses this evidence, stating: "I accept all other evidence submitted as new evidence".

[19] Accordingly, there is no merit to the Applicants' assertion that the Officer failed to consider the evidence submitted.

[20] With respect to the IFA, the Applicants argue the PRRA Officer failed to address whether there is a viable IFA for them in Ibadan based upon the new evidence.

[21] The two-prong test for finding an IFA is as follows: (i) there is no serious possibility of the individual being persecuted in the IFA area (on the balance of probabilities); and
(ii) conditions in the proposed IFA must be such that it would not be unreasonable in all the circumstances for an individual to seek refuge there (*Rasaratnam v Canada (Minister of Employment and Immigration)*, [1992] 1 FC 706; *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, 1993 CanLII 3011 (FCA)).

[22] The Applicants argue that they had previously relocated to the proposed IFA and that this is known to their agent of persecution. On this issue, the PRRA Officer noted that the RAD did not accept the PA's evidence that she had relocated to the IFA. The Officer stated, "I find that counsel has provided insufficient personalized evidence of probative value to overturn the finding that the applicants' have a viable IFA in Ibadan."

[23] Overall, it was reasonable for the PRRA Officer to defer to this finding. In essence, the Applicants are asking this Court to reweigh the evidence before the Officer, which is not the role of a reviewing Court on judicial review (*Vavilov* at para 125).

[24] Finally, the Applicants argue the Officer did not address the risks identified in the country condition evidence in relation to the PA being accused of being a witch. The Officer accepted the country condition documents as new evidence, and states that this evidence was considered.

[25] The mere fact that the Officer does not specifically reference the articles pertaining to witchcraft does not mean the Officer did not consider them (*Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration),* 1998 CanLII 8667 (FC) at para 16). Furthermore, this is not a situation where the Officer's failure to mention evidence relates to a critical point, or otherwise contradicts the Officer's findings (*Khir v Canada (Citizenship and Immigration),* 2021 FC 160 at para 48). No error arises on this issue.

[26] Overall, the Applicants have not established any error in the Officer's finding that there was insufficient evidence to support their claim. Therefore, the decision of the PRRA Officer is reasonable.

## V. Conclusion

[27] This judicial review is dismissed. There is no question for certification.

**JUDGMENT IN IMM-6449-21**

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

1. This application is dismissed.

2. There is no question for certification.

"Ann Marie McDonald"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-6449-21 |
| **STYLE OF CAUSE:** | KAFAYAT MOSUNMOLA AJIHUN OLALERE-MARTINS, KISSMAT OMOJOJUOLA ABIKE MARTINS v MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
| **DATE OF HEARING:** | JUNE 6, 2022 |
| **JUDGMENT AND REASONS:** | MCDONALD J. |
| **DATED:** | JULY 4, 2022 |

**APPEARANCES:**

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| Zofia Rogowska | FOR THE RESPONDENT |

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