Federal Court  Cour fédérale

**Date: 20230717**

**Docket: IMM-3624-22**

**Citation: 2023 FC 969**

[ENGLISH TRANSLATION]

**Ottawa, Ontario, July 17, 2023**

**PRESENT: Madam Justice St-Louis**

**BETWEEN:**

**NADJE EPSE ZADI**
**OHILIBO MARIE CHANTAL**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Introduction

[1] Nadje Epse Zadi, the applicant, is seeking judicial review of the decision dated April 4, 2022, by which the Refugee Appeal Division [the RAD] confirmed the decision of the Refugee Protection Division [the RPD] that Nadje Epse Zadi is neither a Convention refugee nor

a person in need of protection under sections 96 and 97 of the *Immigration and Refugee Protection Act*, SC 2001 c 27 [the Immigration Act].

[2] Both the RPD and the RAD rejected Nadje Epse Zadi's claim for refugee protection on the grounds that she has a viable internal flight alternative [IFA] in Yamoussoukro, San Pedro, and Daloa in Côte d'Ivoire.

[3] For the following reasons, and considering the applicable standard of review, I will dismiss the application for judicial review. The applicant has not demonstrated that the RAD's decision is unreasonable.

## II. Background

[4] Nadje Epse Zadi is a citizen of Côte d'Ivoire. On June 5, 2019, she arrived in Canada with a visitor visa and then claimed refugee protection, alleging that her life would be at risk if she returned to Côte d'Ivoire.

[5] On June 14, 2019, Nadje Epse Zadi signed her Basis of Claim Form. In short, she alleges that she is afraid of being persecuted by a former classmate because of a disagreement in a student debate that took place between 2007 and 2010. According to her allegations, this former classmate, Moussa, a supporter of President Alassane Ouattara, would like to attack Nadje Epse Zadi given her membership in the same ethnic group as former President Laurent Gbagbo and because of her political opinion. In 2011, he allegedly looted Nadje Epse Zadi's home and set it on fire, and on December 15, 2018, he reportedly entered her home with three individuals to beat

and sexually assault her. The agent of persecution also allegedly kidnapped Nadje Epse Zadi's spouse while she was taking refuge at a friend's home.

[6] On December 8, 2021, the RPD concluded that there is no serious possibility that the applicant would be persecuted or that, on a balance of probabilities, she would be subjected to a danger of torture, a risk to her life or the risk of cruel and unusual treatment or punishment anywhere in Côte d'Ivoire. In light of the applicant's profile and the objective documentary evidence on the record, the RPD concluded, first, that the agent of persecution does not have the ability or motivation to locate the applicant to persecute her in the proposed IFAs, and that she would not be subjected to more than a mere possibility of persecution because of her ethnicity, her status as a woman or her political opinion in the proposed IFAs; and second, that it is not objectively unreasonable for the applicant to seek refuge in the proposed IFAs, either Daloa, San Pedro or Yamoussoukro in Côte d'Ivoire. The RPD concluded that the applicant is neither a Convention refugee under section 96 of the Immigration Act nor a person in need of protection under paragraph 97(1)(a) or 97(1)(b) and therefore rejected her refugee protection claim.

[7] Ms. Nadje Epse Zadi appealed the RPD decision to the RAD. She then presented evidence—newspaper excerpts and testimonies. She did not raise any argument against the RPD's conclusions on the second prong of the IFA test, namely, that it is objectively reasonable for her to settle in the proposed IFAs, nor did she dispute the RPD's conclusions rejecting her allegations of fear stemming from political opinion favourable to former President Gbagbo or those stemming from her membership in the social group of women. Nadje Epse Zadi contested only the RPD's conclusion on the first prong of the IFA test, on the serious possibility of

persecution in the proposed IFAs, and then essentially alleged that the RPD erred in concluding that the "microbes", a criminal group led by her agent of persecution, did not operate throughout Côte d'Ivoire. The Certified Tribunal Record (at page 46) reveals that Nadje Epse Zadi argued as follows before the RAD:

> [TRANSLATION]
>
> The panel finds that there is no serious possibility that the appellant would be persecuted or at risk of being subjected to a danger of torture or a risk to life everywhere in Côte d'Ivoire. The panel's investigations were not in-depth ~ To reach this conclusion prejudicial to the appellant. Because several newspapers talk about the mobility of the microbe phenomenon in Côte d'Ivoire. Indeed, as the appellant stated during the hearing, the microbes operate in several cities in Côte d'Ivoire. They are not only concentrated in the capital as the panel alleges. They can be found in Gagnoa, Yamoussoukro, Daloa and so on. Where can the appellant be safe if her agent of persecution is in a group of criminals who are present throughout her country? Microbes operate everywhere, including in the cities referred to by the panel. In the panel's opinion, the agent of persecution, with his abilities, could have located the appellant's family. The question is, why locate the appellant's family if the agent of persecution knows that the appellant is out of the country? In addition, the agent of persecution knows the appellant and not her family? How can he look for people he does not know? The panel considers that the appellant cannot bump into the agent of persecution in the cities it selected. As we stated, the agent of persecution is in a group that is present in every city across the country, and there is a good chance of bumping into the appellant again. The question that may be asked is does the appellant need to go and see whether her agent of persecution can locate her? Is such a risk necessary? The panel notes that the persecution is not due to her ethnic group. Whereas if she is being persecuted, it is because she shares the same ethnicity as President Gbagbo and because of the comments she made during her discussion with Moussa, her agent of persecution.

[8] In its decision dated April 4, 2019, the RAD dismissed the appeal and confirmed the RPD's determination that the applicant is neither a Convention refugee nor a person in need of protection. The RAD was of the view that the evidence did not establish that the agent of

persecution would have an interest in locating Nadje Epse Zadi in the proposed IFAs, or that it would be unreasonable for her to move there, and the RAD considers that there is an IFA in these cities. In the RAD's opinion, Nadje Epse Zadi did not establish that the agent of persecution has the ability and motivation to locate her in the proposed IFAs, or that she has a reasonable fear of persecution as a member of the social group of women or because of her ethnicity or political opinion.

[9] The RAD reviewed the new evidence that Nadje Epse Zadi intended to file before it, did not consider it admissible and therefore rejected it. Nadje Epse Zadi does not dispute this conclusion before the Court. The RAD therefore dismissed Nadje Epse Zadi's request for a hearing, a conclusion that is also not contested before the Court.

[10] The RAD conducted an independent analysis of all the evidence, including listening to the recording of the RPD hearing; it considered the Chairperson's *Guideline 4: Women Refugee Claimants Fearing Gender-Related Persecution* and applied the standard of correctness.

[11] It then considered both prongs of the IFA. Regarding the first prong, the RAD analyzed the claim under section 96 of the Immigration Act in view of the political opinion that Nadje Epse Zadi is alleged to have and considered the ability and motivation of the agent of persecution to locate her.

[12] In connection with the agent of persecution's ability to locate Nadje Epse Zadi, the RAD reviewed the objective documentary evidence regarding the "microbes" phenomenon and

concluded that the microbes may be operating in cities other than Abidjan, but that they are undeniably concentrated in that city, according to the objective documentary evidence; it also found that this evidence does not establish a serious possibility that they will have the ability to find the applicant in the proposed IFAs. The RAD also did not accept Nadje Epse Zadi's argument that since the agent of persecution did not know her family members, he could not search for people he does not know. In the RAD's opinion, this argument contradicts that of Nadje Epse Zadi, who alleges that the agent of persecution is the head of a very powerful criminal organization operating across the country. The RAD was of the view that if this were the case, which it did not consider was established, he would have the ability to identify and locate Nadje Epse Zadi's family members. The RAD considered that Nadje Epse Zadi's allegation that there is a high likelihood that she would bump into the agent of persecution is based on assumptions and not facts, and it did not accept it. The RAD considered the RPD's conclusion that it has not been established that the agent of persecution has the ability to locate the appellant in the proposed IFAs to be correct.

[13] In connection with the agent of persecution's motivation to locate Nadje Epse Zadi, the RAD considered the agent of persecution's lack of contact with the people around Nadje Epse Zadi or her family members for almost three years, and it found that Nadje Epse Zadi did not establish that there is more than a mere possibility that the agent of persecution is motivated to locate her in the proposed IFAs today because of comments she made during a debate organized by the student association more than a decade ago. The RAD considered the RPD's conclusion that Nadje Epse Zadi did not establish the agent of persecution's motivation to locate her in the proposed IFAs to be correct.

[14] In connection with the fear related to the ethnic group of former President Gbagbo, the RAD noted that Nadje Epse Zadi did not point out before it what errors the RPD allegedly made. The RAD shared the RPD's view that the documentary evidence does not support an allegation of persecution based on membership in the identified ethnic group and found that the RPD was correct in concluding that the serious possibility of Nadje Epse Zadi being persecuted because of her membership in the same ethnic group as former President Gbagbo had not been established.

[15] The RAD noted that Nadje Epse Zadi did not dispute the RPD's conclusions regarding her fear related to political opinion favourable to former President Gbagbo and her fear related to her membership in the social group of women and confirmed the RPD's conclusions to be correct.

[16] As for the second prong of the IFA test, the RAD noted that Nadje Epse Zadi does not dispute the RPD's conclusion that it would be objectively reasonable for her to settle in the proposed IFAs in Yamoussoukro, San Pedro, and Daloa, and the RAD stated that it agreed with the RPD on this issue.

## III. Discussion

### A. *Standard of review*

[17] The applicant submits two arguments regarding the first prong of the IFA: (1) her credible testimony should have been sufficient to demonstrate that she will be at risk in the suggested IFAs; and (2) the RAD erred in not considering her particular situation.

[18] With respect to the second prong of the IFA, the applicant contends that it would be objectively unreasonable to settle in the proposed IFAs given the unemployment rate in Côte d'Ivoire, as well as the difficulties in finding a job and paying for housing.

[19] The parties rightly agree that the decision must be reviewed according to the standard of reasonableness *(Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). According to the reasonableness standard of review, "[i]nstead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable" (*Vavilov* at para 83). When applying the reasonableness standard, the Court will intervene only in cases where the decision is not justified, transparent or intelligible, or if it contains a reviewable error.

[20] As stated by Gascon J at paragraph 23 of *Singh v Minister of Citizenship and Immigration* 2020 FC 350 [*Singh*], "[i]n doing so, the reviewing court will only intervene with respect to the administrative decision maker's findings of fact in 'exceptional circumstances', where the decision maker 'has fundamentally misapprehended or failed to account for the evidence before it'" (*Vavilov* at paras 125–126).

B. *Law applicable to internal flight alternative*

[21] As to the law applicable to IFAs, the parties agree that the burden is on the applicant to prove that she has no IFA in her country, as it is a condition for refugee status. The IFA test is two-pronged. Refugee protections claimant have an IFA when (1) they are not at serious risk of

persecution or, on a balance of probabilities, will not be personally subjected to a risk of harm in the IFA; and (2) it would not be objectively unreasonable for them to seek refuge in that location (*Thirunavukkarasu v Canada (Minister of Employment and Immigration*), [1993] FCA No 1172 (FCA) at para 12; *Blancas Calderon v Canada (Citizenship and Immigration)*, 2010 FC 263 at para 10).

C. *RAD decision on first prong of IFA analysis*

[22] Nadje Epse Zadi first argues that her testimony, which was found to be credible, should have been sufficient to demonstrate that she would be at risk in the suggested IFAs. This argument cannot succeed.

[23] As the Minister points out, Nadje Epse Zadi is confusing credibility and probative value here. The RAD could conclude that the evidence she submitted was simply insufficient to demonstrate a serious possibility of persecution in the IFAs, although the RAD did not question her credibility. I take note of the words of my colleague Pamel J in this regard in *Rahman v Canada (Citizenship and Immigration)*, 2020 FC 138 at paragraphs 68 and 69:

> [68] I accept that, barring good reasons to the contrary, applicants are to be given the benefit of the doubt as regards the evidence. However, there is a difference between evidence based upon the direct knowledge of an applicant, and inferences that an applicant seeks to draw from such evidence. There is a general presumption that the refugee claimant's allegations are true unless there are reasons to doubt their truthfulness *(Maldonado v Canada (Minister of Employment and Immigration)* (1979), 1979 CanLII 4098 (FCA), [1980] 2 FC 302 (FCA)).
>
> [69] However, this presumption pertains to credibility (i.e., truthfulness), not probative value. As Mister Justice Grammond explains in *Magonza*, the rules relating to credibility and probative value are different. It is for that reason that courts may believe the

> truthfulness of the claimant's claims or testimony, yet determine that the claimant failed to provide sufficient evidence to support the inferences he or she seeks to draw from the evidence.

[24] With respect to the second argument raised, that the RAD erred by not considering her particular situation, Nadje Epse Zadi does not identify anything that the RAD supposedly overlooked in the case before it. Furthermore, the allegations and information raised before the Court were not raised before the RAD, nor are they supported by the evidence.

[25] In fact, there is every indication that Nadje Epse Zadi disagrees with the assessment of the evidence made by the RAD and that she is asking the Court to choose her version rather than that of the RAD. However, as my colleague Gascon J pointed out in *Singh*, this is not the role of the Court on judicial review (citing *Kanthasamy v Canada (Citizenship and Immigration)*, 2014 FCA 113 at para 99). In a judicial review, the Court is not permitted to reassess the evidence or substitute its own assessment for that of the administrative decision maker. Deference to an administrative decision maker includes deference to its conclusions and assessment of the evidence. The reviewing court must in fact refrain from "weighing and reassessing the evidence considered by the decision maker" *(Canada (Canadian Human Rights Commission v Canada (Attorney General)*, 2018 SCC 31 at para 55, citing *Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at para 64 [*Khosa*]).

[26] I will therefore turn down Nadje Epse Zadi's invitation to intervene.

D. *RAD decision on second prong*

[27] Before the RAD, Nadje Epse Zadi did not dispute the RPD's conclusion on the second prong of the IFA test.

[28] Generally, applicants are prohibited from raising new legal issues before the Court that could have been raised prior to judicial review *(Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22–26 [*Alberta Teachers*]; *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2014 FCA 245 at paras 42–47; *Erasmo v Canada (Attorney General)*, 2015 FCA 129 at para 33). Although there are exceptions to this rule, the applicant could not identify any that may apply to this proceeding (*Alberta Teachers* at paras 22, 28).

[29] The application of the general rule is based on the principle that the RPD and the RAD, not the Court, are the panels designated by Parliament to make findings of fact, ascertain the applicable law, consider general policy issues and draw conclusions based on the facts on the record *(Association of Universities and Colleges of Canada v Canadian Copyright Licencing Agency (Access Copyright)*, 2012 FCA 22 at para 17). In the context of judicial review, it is not for the reviewing court to reassess the evidence considered by the administrative decision maker (*Vavilov* at para 125; *Khosa* at para 61).

[30] The burden was on the applicant to establish the unreasonableness of the IFA before the RAD. However, she chose not to submit any arguments in this regard; it would be inappropriate for the Court to consider new arguments in view of this situation.

## IV. Conclusion

[31] Nadje Epse Zadi has not satisfied me that the RAD's decision is unreasonable. On the contrary, the decision is based on an internally coherent and rational chain of analysis and is justified in view of the legal and factual constraints to which the administrative decision maker was subject and the evidence and arguments presented to it. The application for judicial review will therefore be dismissed.

**JUDGMENT in IMM-3624-22**

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

1. The application for judicial review is dismissed.

2. No question is certified.

3. No costs are awarded.

"Martine St-Louis"
Judge

Certified true translation
Michael Palles

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | NO. IMM-3624-22 |
| **STYLE OF CAUSE:** | NADJE EPSE ZADI, OHILIBO MARIE CHANTAL v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | MONTRÉAL, QUEBEC |
| **DATE OF HEARING:** | JULY 12, 2023 |
| **JUDGMENT AND REASONS:** | ST. LOUIS J |
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