

Federal Court



Cour fédérale

**Date: 20230925**

**Docket: IMM-7078-22**

**Citation: 2023 FC 1291**

**Ottawa, Ontario, September 25, 2023**

**PRESENT: Mr. Justice O'Reilly**

**BETWEEN:**

**ADIJAT KUBURAT APENA  
STEPHEN OLUWADEMILADE ALATISE  
SEBASTIAN IREMIDE ALATISE**

**Applicants**

**and**

**MINISTER OF CITIZENSHIP  
AND IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] In 2014, Ms Adijat Kuburat Apena was subjected to inhumane rituals at the hands of her extended family members in Nigeria. After the birth of her eldest son, she was concerned that he might have to endure the same treatment. To avoid potential harm to her son, she went into hiding and then fled to the United States. There, she gave birth to her second son. The family

then sought refugee protection in Canada on the basis that Ms Apena and her eldest son feared mistreatment in Nigeria.

[2] In 2021, the Refugee Protection Division found that Ms Apena and her son did not face a serious risk of persecution in Nigeria; nor did they face torture, a risk to life, or cruel and unusual treatment or punishment. The family appealed the RPD's decision to the Refugee Appeal Division. The RAD upheld the RPD's decision finding that there was only a mere possibility Ms Apena's relatives would use force to make her eldest son undergo rituals, or subject her to any additional harm. The RAD found that they were not at risk of persecution or serious mistreatment in Nigeria.

[3] In addition, the RAD concluded that the RPD had not erred in failing to apply a "compelling reasons" analysis. That analysis applies when a person who experienced serious persecution in the past argues that even though the source of the persecution has ceased to exist, there are compelling reasons why they should not be required to return to their country of origin. In other words, the applicant must first establish both that they met the definition of a Convention refugee or a protected person at some point and that the reasons for the refugee claim have ceased to exist due to country conditions. Only then can the Immigration and Refugee Board conduct a compelling reasons analysis. The RAD found that the conditions in Nigeria have not changed since Ms Apena fled the country, so the compelling reasons provision did not apply.

[4] Ms Apena submits that the RAD's finding – that there was no need to consider whether there were compelling reasons why she should not return to Nigeria – was unreasonable. She asks me to quash the RAD's decision and order another panel of the RAD to reconsider her appeal.

[5] I can find no basis for overturning the RAD's decision. For the reasons below, I find that its conclusion that there was no need to consider the issue of compelling reasons was not unreasonable.

## II. Was the RAD's Decision on Compelling Reasons Unreasonable?

[6] A person who was subjected to persecution in the past is not entitled to refugee protection if “the reasons for which the person sought refugee protection have ceased to exist” (*Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], s 108(1)(e); see Annex for provisions cited). However, an exception exists if the person has compelling reasons for “refusing to avail themselves of the protection of the country which they left” (s 108(4)).

[7] The purpose of the exception is to recognize that those who have experienced past persecution may justifiably not wish to return to the place where their mistreatment occurred, even if the risk of harm is no longer present. In that situation, the question arises whether there are compelling reasons why they should not be required to return to their home country (*Binda v Canada (Citizenship and Immigration)*, 2022 FC 1211 at para 7).

[8] There are two questions that must be answered before considering the issue of compelling reasons. The first is whether the applicant faced persecution in the past. If so, the second question is whether the source of the persecution no longer exists.

[9] Here, the RPD and RAD answered the first question in the negative, albeit implicitly. While the RPD and the RAD described the painful rituals that Ms Apena had endured, they also found that she could have refused to undergo them. The RAD cited Ms Apena's testimony that she had never seen anyone forced to undergo the treatment she had experienced; her belief that she might have been subjected to force if she had refused to participate was speculative. Accordingly, there was no finding that Ms Apena had experienced past persecution.

[10] The RAD answered the second question in the negative. The reasons for which Ms Apena and her eldest son sought refugee protection still exist as her relatives continue to search for them.

[11] I note that the RAD concentrated on the second question and did not give an explicit answer to the first. The better practice would have been to make a clear finding on the issue of past persecution, the first question, before considering whether the source of the persecution has ceased to exist, the second question. The latter issue arises only if there has been an affirmative finding on the former. If both questions are answered affirmatively, the issue of compelling reasons must then be addressed.

[12] I find that the RAD's decision was not unreasonable; its reasons were intelligible, justified, and transparent. The circumstances in which the issue of compelling reasons must be addressed were simply not present. Accordingly, I must dismiss this application for judicial review.

III. Conclusion and Disposition

[13] The RAD's treatment of the issue of compelling reasons was not unreasonable as the conditions for its application were not present. Therefore, I must dismiss this application for judicial review. Neither party proposed a question of general importance for me to certify, and none is stated.

**JUDGMENT IN IMM-7078-22**

**THIS COURT'S JUDGMENT is that**

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

"James W. O'Reilly"  
\_\_\_\_\_  
Judge

Annex

*Immigration and Refugee Protection Act,  
SC 2001, c 27*

*Loi sur l'immigration et la protection des  
réfugiés, LC 2001, c 27*

Rejection

Rejet

**108.** (1) A claim for refugee protection shall be rejected, and a person is not a Convention refugee or a person in need of protection, in any of the following circumstances:

**108.** (1) Est rejetée la demande d'asile et le demandeur n'a pas qualité de réfugié ou de personne à protéger dans tel des cas suivants:

[...]

[...]

(e) the reasons for which the person sought refugee protection have ceased to exist.

(e) les raisons qui lui ont fait demander l'asile n'existent plus.

Exception

Exception

**108.** (4) Paragraph (1)(e) does not apply to a person who establishes that there are compelling reasons arising out of previous persecution, torture, treatment or punishment for refusing to avail themselves of the protection of the country which they left, or outside of which they remained, due to such previous persecution, torture, treatment or punishment.

**108.** (4) L'alinéa (1)e ne s'applique pas si le demandeur prouve qu'il y a des raisons impérieuses, tenant à des persécutions, à la torture ou à des traitements ou peines antérieurs, de refuser de se réclamer de la protection du pays qu'il a quitté ou hors duquel il est demeuré.

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

**DOCKET:** IMM-7078-22  
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**PLACE OF HEARING:** TORONTO, ON  
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