

Federal Court



Cour fédérale

**Date: 20240403**

**Docket: IMM-6205-22**

**Citation: 2024 FC 516**

**Toronto, Ontario, April 3, 2024**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**PROMISE CHINEDUM NOSIRI,  
CHINOMSO CHUKWUEBUKA NOSIRI and  
CHIDEBEREM MCDONALD NOSIRI**

**Applicants**

**and**

**THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] This is a judicial review of a decision of the Refugee Appeal Division [RAD] dated June 8, 2022 [Decision]. The RAD found Ms. Promise Chinedum Nosiri [the Principal Applicant or PA] and her sons Chinomso Chukwuebuka Nosiri and Chideberem Mcdonald Nosiri [together,

the Applicants], were neither Convention refugees or persons in need of protection pursuant to sections 96 and 97 of the *Immigration and Refugee Protection Division*, SC 2001, c 27 [IRPA].

[2] The Applicants are citizens of Nigeria. The PA was a lawyer in her home country. Her husband, and the children's father, still lives in Nigeria.

[3] The Applicants based their claim on two issues. First, the PA was involved in a land dispute that led to attempts on her life and an attempt on the minor applicant's life. Second, a lawyer in the PA's firm was arrested as being a member of the Indigenous People of Biafra [IPOB], a separatist group in Nigeria, and she fears the consequences of her perceived association to the group. The RAD's main finding centered on whether the Applicants established persecution. The RAD found there was not enough evidence linking the three incidents of harm the Applicants recounted—a shooting, food poisoning, and attempted burglary—to the land dispute. The RAD also found the minor applicant's mental health issues, which the Applicants allege arose following his food poisoning, could be adequately addressed in Nigeria. The RAD did not find there was enough evidence to establish the PA's perceived association to IPOB would result in her persecution.

[4] The Applicants seek a judicial review of the Decision. I grant this application as I find the Decision unreasonable.

II. Issues and Standard of Review

[5] The main issue before this Court is whether the Decision is reasonable. The Applicants dispute a number of the RAD's findings. The Respondent did not file any written submissions, and as such was only allowed to monitor the hearing and was not allowed to make any oral submission: *Orakposim v Canada (Minister of Citizenship and Immigration)*, 2023 FC 1472 at para 8 and *Kumar v Canada (Minister of Citizenship and Immigration)*, 2023 FC 1653 at para 8.

[6] The presumptive standard of review in this case is reasonableness and the circumstances of this case do not warrant a departure from the presumption of reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

III. Analysis

[7] I find the RAD committed the following reviewable errors.

A. *The RAD erred in finding that it was unreasonable for the PA to not initiate a legal proceeding to deal with the land dispute*

[8] The Refugee Protection Division [RPD] rejected the Applicants' claim in part due to its finding that the PA did not provide a reasonable explanation for why she did not file a petition with the Economic and Financial Crimes Commission [EFCC] or the courts regarding the land dispute.

[9] The RAD found the RPD failed to consider the PA's explanation that she could not approach the EFCC because it did not deal with private real estate matters. However, the RAD concluded the RPD was correct in its finding that the PA should have gone to the courts. The RAD noted that it was unreasonable for the PA, a practicing lawyer with a speciality in real estate, to not have approached the court system or initiate a legal proceeding because the PA believed it would be a drawn-out process. The RAD noted the land dispute itself went on for eight years and involved the PA's active, fruitless efforts at resolving the dispute, as well as her belief that there were attempts on her life.

[10] The Applicants submit the RAD erred because the PA provided a reasonable and sufficient explanation for why she could not go to the courts to resolve the land dispute issue, given that the judicial system in Nigeria is lengthy. The Applicants also submit that the police did not protect them despite the PA reporting the attack, which bolstered the explanation for why she could not seek recourse in the judicial system.

[11] I find the RAD erred, but not entirely for the reasons that counsel for the Applicants suggests.

[12] As the transcript of the RPD hearing revealed, the PA provided a detailed explanation for why she did not file a legal proceeding in court. I have abstracted the relevant portions of the transcript:

**Member:** I'm saying did you ever file a petition in any court with respect to your land transaction, difficulties with all the parties?

**Claimant:** No I did not file in court and I did not go to EFCC as you asked I did not file in court and I know how the court system works. The court system

unfortunately is recognized media and the most important reason why I didn't file it's because if I go to court, government will take my property they will see it as non-bail contention we think that and moreover the land containing this property is are highly placing with theirs and they would try to drive their way the system which they thought.

The system is actually for the highest bidder and it would drop down for years by the police just the same man dealing with real estate mal-transaction in their actual state. They normally thought it was it is great time being the corner of it. So most of this just will be take it and they just grant it. These are the reasons why I opted out of going to court and instead pursued (inaudible 01:46:45)

[13] When put out of context, it is perhaps a bit difficult to fully appreciate the PA's explanation. However, the PA gave extensive testimony about how the land registration system works in Nigeria and how the agents of persecution tried to prevent her from registering her title to the land, as they wanted to resell the land to others for a higher return. The PA also testified about how the local authorities and the authorities at the land registry were aiding and abetting the agents of persecution.

[14] The main reason the PA offered as to why she decided not to go to the court was not the delay. Rather, the PA, an experienced lawyer in Nigeria, explained that if she had gone to court, the government would have taken her property. The PA further explained that the delay in the court system would be used by the agents of persecution to drag her case out for their own gain.

[15] In finding that it was unreasonable for the PA to not "even initiate a legal proceeding simply because it would take a long time to conclude," the RAD erred. The Decision did not mention any of the explanations the PA provided. In failing to refer to these explanations, the RAD either ignored or misconstrued the Applicants' evidence. Either way, the RAD's finding in this respect constitutes a reviewable error.

B. *The RAD erred in finding the PA has not established she faces a serious possibility of persecution due to her alleged connection to IPOB*

[16] I also find the RAD erred with respect to its analysis concerning the PA's fear due to her connection to IPOB. IPOB is a separatist movement mostly in the southeastern region of Nigeria, where the Applicants come from. The Nigerian military declared IPOB a "terrorist organization" in 2017.

[17] The PA states that she is being sought by Nigerian authorities, in particular the Department of State Security [DSS], because a former lawyer friend implicated her of being a member and/or recruiter for IPOB.

[18] As this allegation arose after the RPD hearing, the PA filed an affidavit attaching new evidence with respect to her alleged association with IPOB including:

- a) text messages from the PA's spouse stating that he was arrested by the DSS supposedly for interrogation but was instead detained for being a spouse of a wanted suspect; the spouse was released only after he bribed a DSS officer, who is a friend, and was advised to disappear as he would be re-arrested;
- b) text messages from the PA's friend advising that he was arrested and detained by the DSS, and that members of the DSS initiated a search on him and found a list of attendants at some meetings and group photos which implicate the PA; and
- c) country conditions evidence concerning IPOB and its treatment by authorities.

[19] In addition, counsel made written submissions asking the RAD to admit the new evidence and argued that the text messages "throw a new light into the danger faced by the [PA] if she and her children are sent back to Nigeria."

[20] Applying subsection 110(4) of the *IRPA* and the criteria set out under *Raza v Canada (Citizenship and Immigration)*, 2007 FCA 385 [*Raza*], the RAD admitted the new evidence, finding that the evidence met all three *Raza* factors, namely credibility, relevance and newness.

[21] The RAD then rejected the PA's new allegation, finding as follows:

- While since 2015 there have been tens of IPOB supporters killed and hundreds arrested, usually during the course of demonstrations for Biafran independence, there is limited evidence to demonstrate arrests have led to prosecutions and convictions. Further, generally "low rank supporters or sympathisers of IPOB" and smaller pro-Biafran groups are unlikely to be of interest to the government. The risk of violence and arbitrary arrests increases during demonstrations or gatherings.
- The PA acknowledged she attended several IPOB meetings, but only as support for her lawyer friend, and she is not a member of IPOB. There is no evidence that the PA has attended demonstrations or protests that would potentially expose the PA to harassment, abuse, and arrest from Nigerian security forces;
- The Applicants' arguments on appeal are almost non-existent on the potential problems that the PA may face. Further, there is no evidence that the PA's husband was abused or otherwise mistreated while in custody and given he paid a bribe to be let out of custody, it is unclear if he would have been brought before the courts or what the outcome may have been;
- The only indication is that the PA is sought for questioning by state officials. There is no evidence that she has been charged with any crime or held any position within the IPOB meeting. If she is ultimately arrested and charged, she would have recourse in the courts and judicial system.

[22] I find the RAD's conclusions unreasonable for several reasons.

[23] First, the evidence the RAD accepted as credible indicates that the Nigerian authorities have already shown an interest in the PA by arresting and detaining her husband to question him about the PA. As such, the RAD's comment that low rank supporters or sympathisers of IPOB

and smaller pro-Biafran groups are unlikely to be of interest to the government is of no relevance.

[24] Second, regardless of whether the Applicants' submission was "non-existent," as the RAD noted, the Applicants did submit detailed evidence with respect to the PA's fear of the DSS due to her alleged association with IPOB. Among other things, the PA confirmed the lawyer friend, whom she shared an office space with, was holding IPOB meetings in his office under the guise of community events. The PA described the relationship between her and the lawyer friend, the number of meetings she had attended and the attendant list the DSS found, where the PA's name appeared on three occasions. The PA noted the lawyer's office and house were searched and the PA's files and books found at the lawyers' office, which tied the PA to the lawyer and to his activities with IPOB.

[25] The RAD admitted all of the new evidence and accepted them as credible, including the evidence that the lawyer friend had been arrested by the DSS and the PA's husband was arrested and detained for questioning about the PA. In light of such evidence, I find it unreasonable for the RAD to conclude that the PA has not established that the authorities "desire to question her about her involvement in attending IPOB meetings organized by her lawyer friend, especially since she denies being a member or supporter." With respect, based on the evidence, that ship has sailed. The authorities have already expressed and acted on their desire to question the PA by arresting her husband. The RAD's finding was contradicted by the evidence it found to be credible.



[26] Finally, simply because the PA's husband was not "abused" or "mistreated" before he paid a bribe to get out of detention does not mean the PA herself would not face any problems when she returns to Nigeria.

[27] For all of the above reasons, I find the Decision unreasonable. I do not need to address the remaining arguments the Applicants raised.

#### IV. Conclusion

[28] The application for judicial review is allowed.

[29] There is no question to certify.

**JUDGMENT in IMM-6205-22**

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

1. The application for judicial review is granted.
2. The decision under review is set aside and the matter referred back for redetermination by a different decision-maker.
3. There is no question to certify.

"Avvy Yao-Yao Go"

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Judge

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

**DOCKET:** IMM-6205-22

**STYLE OF CAUSE:** PROMISE CHINEDUM NOSIRI, CHINOMSO  
CHUKWUEBUKA NOSIRI AND CHIDEBEREM  
MCDONALD NOSIRI v THE MINISTER OF  
CITIZENSHIP AND IMMIGRATION

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MARCH 7, 2024

**JUDGMENT AND REASONS:** GO J.

**DATED:** APRIL 3, 2024

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