

Federal Court



Cour fédérale

Date: 20241009

Docket: IMM-9759-23

Citation: 2024 FC 1597

Toronto, Ontario, October 9, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

**PROSPER ONORIOSE
ELO ONORIOSE
MITCHELLE ELOZINO KPAROBO ONORIOSE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The Applicants seek judicial review of a decision of the Refugee Appeal Division [RAD], which upheld a Refugee Protection Division [RPD] determination that the Applicants are neither Convention refugees nor persons in need of protection, pursuant to s.96 and s.97 of the *Immigration and Refugee Protection Act* [IRPA].

[2] The Applicants allege a forward-facing risk of persecution, or risk of torture, risk to life, or risk of cruel and unusual punishment due to the Principal Applicant's refusal to take on the role of Chief Priest at his ancestral shrine. The determinative issue at the RAD was credibility. While the RAD overturned many of the RPD's credibility findings, it maintained that the Applicants had not credibly established the basis of their claim, because the objective evidence contradicted their allegations of the harm they would face.

[3] For the reasons that follow, I will grant this application. While aspects of the RAD's decision were thoroughly reasoned and well supported, its consideration of a kidnapping incident lacked a rational chain of analysis and was, as such, unreasonable. This incident was central to the basis of the Applicants' claims and therefore judicial intervention is warranted.

II. BACKGROUND

A. *Facts*

[4] The Applicants are: Propser Onoriose, the Principal Applicant [PA]; his wife, Elo Onoriose, the Associate Applicant [AA]; and their daughter, Mitchell Eozino Kparobo Onoriose, the Minor Applicant [MA]. They are citizens of Nigeria. The Applicants allege that they are at risk from the PA's paternal family (the head of which is Johnson Agufure) and the Ebire guardians of the shrine, because the PA refused to take the position of Chief Priest at the Emuebri Shrine in his ancestral village. The Applicants further allege that the MA is at risk due to her father's refusal to take the position, as the MA would then be groomed for the position of Chief Priest and would be forced to undergo female genital mutilation [FGM].

[5] On January 10, 2014, the PA was called by his uncle, George Onoriose (now deceased), who was the head of the Onoriose family at the time, and summoned to his ancestral village of Uduophori. There, the PA met the family elders: his uncle George Onoriose, his parents, and the community heads. The head of the community, Johnson Agufure, informed the PA that he had been chosen by the gods to serve as Chief Priest of the community shrine, the Emuebi Shrine. The PA refused, as it violated his beliefs as a Christian.

[6] The PA's family and the community heads insisted that he was the chosen one, and that no one else could perform the function as long as he was alive – unless his first child took his place, instead.

[7] The PA returned to his home in Ughelli and informed his wife of the conversation. They continued with their lives as usual, until “strange and evil things” started happening, which forced them to move secretly to Port Harcourt.

[8] In February 2016, a group of four men attempted to kidnap the PA. They were unsuccessful, due to the intervention of passersby and the Nigerian police. One of the would-be kidnapers was apprehended, and he confessed that they had been sent by the community heads of Uduophori to kidnap the PA and force him to return to the village as the Chief Priest, since he would not do so voluntarily.

[9] In February 2016, the Applicants moved to Asaba Delta State where their daughter, the MA, was born. The PA and the AA became concerned that their daughter would be subjected to FGM, which was the usual practice for female children in their family, and which would be

required if the MA were groomed to be Chief Priest. As alluded to above, according to the Onoriose family heads and community heads, if the PA refused to be Chief Priest, he would have to be killed in order to allow another to take on the role – unless his first child (the MA) became Chief Priest instead.

[10] As a result, the Applicants moved to Lagos in January 2017. At this time, the PA's father became seriously ill with a "strange illness." The Applicants were informed that unless the PA returned to his ancestral village to serve the gods at the Emuebi Shrine, his father would remain sick or die.

[11] This was the catalyst for the Applicants fleeing Nigeria. With the help of friends, the Applicant secured American visas and travelled to the US on October 6, 2017. On January 5, 2022, the Applicants travelled to Canada and submitted a claim for refugee protection.

[12] The RPD rejected the Applicants' claim in a decision dated March 31, 2023. It found that the Applicants were neither Convention refugees nor persons in need of protection. The determinative issue was credibility. The RPD found that the Applicant's credibility was undermined by the following: 1) the omission of certain agents of persecution from the Applicants' Basis of Claim form [BOC]; 2) the omission of an assault against a woman for which the PA was blamed, because he refused to become Chief Priest; 3) material inconsistencies regarding the PA's whereabouts at the time of the kidnapping attempt; 4) the unreliability of a newspaper article about the attempted kidnapping; 5) the Applicant's inability to produce a police report regarding the attempted kidnapping. As a result, the RPD concluded

that the PA was likely not offered the position of Chief Priest, and, as such, it is unlikely that the Applicants were targeted. The RPD also found that the kidnapping attempt likely did not happen.

[13] The Applicants appealed to the RAD.

B. *Decision under Review*

[14] The RAD confirmed the RPD's determination that the Applicants were neither Convention refugees nor persons in need of protection in a letter dated July 5, 2023. The determinative issue at the RAD was also credibility.

[15] In arriving at this conclusion, the RAD found that the RPD had erred in some of its findings, but that the Applicants had still not credibly established their claims. The RAD noted that the National Documentation Package [NDP] for Nigeria contradicts their evidence, and found that the PA's refusal of the Chief Priest position does not come with the consequences he alleged – either for himself, or for the MA.

[16] The RAD found the RPD had erred in impugning the Applicants' credibility based on the omission of agents of persecution from their BOC. The RAD found that the PA's testimony regarding the specific agents of persecution he feared was consistent with his BOC narrative that stated he feared harm from "community heads." At the RPD hearing, when asked, the PA identified the community heads by name as agents of persecution without hesitation.

[17] The RAD also found the RPD had erred in impugning the Applicants' credibility based on his BOC omission of the assault of a woman for which the PA was blamed, allegedly because

he refused the position of Chief Priest. The RAD found the RPD had conducted a microscopic assessment of the evidence on a peripheral issue, and it was therefore an error for the RPD to draw adverse credibility inferences from it.

[18] The RAD further determined that the RPD had incorrectly found that the Applicants had not credibly established the attempted kidnapping against the PA. It disagreed with the RPD that the newspaper article regarding the alleged kidnapping was likely fabricated or otherwise untrustworthy, as the RAD member had been able to find the article in question, via a Google search, published online in The Nation on February 16, 2016 – a date that was consistent with the PA’s testimony. Therefore, the RAD concluded that the RPD erred in finding that there likely had not been an attempted kidnapping of the PA in 2016 in Port Harcourt.

[19] However, the RAD ultimately concluded that the article did not hold sufficient weight to establish the basis of the Applicant’s claim, as it did not demonstrate the agents of harm have harmed the PA or were responsible for the attempted kidnapping. The RAD found that the attempted kidnapping only demonstrated that there was interest in returning the PA to his community, and did not constitute persecution or harm. It also found that the evidence regarding the PA’s attempted kidnapping did not identify his specific agents of harm – i.e., the four leaders referenced in his testimony – by name. Therefore, the RAD reasoned that although the newspaper article does mention that a shrine follower was one of the kidnappers caught, it does not demonstrate that the four identified agents of harm were responsible for the kidnapping.

[20] Ultimately, the RAD concluded, “the attempted kidnapping does not weigh in favour of the Appellants’ claim that the PA’s agents of harm would persecute him or put a risk to his life rising to the level of a section 97 claim.”

[21] In denying the Applicants’ appeal, the RAD relied principally on country conditions evidence that indicates it is generally possible to refuse the position of Chief Priest without consequences, beyond fear of angering the upper spirits. It noted that there was no incident for two years after the PA refused the Chief Priest role, and that he faced nothing between February 2016 and his departure from Nigeria in October 2017.

[22] The RAD also noted that there is no corroborative evidence that the Chief Priest position remains open or that his agents of persecution still mean him harm. In coming to this conclusion, the RAD assigned no weight to a corroborative letter from Idoghour John, because of concerns regarding the veracity of the document.

[23] The RAD finally found that while the RPD had failed to apply the *Chairperson’s Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board* [Gender Guidelines] in assessing the MA’s claim, there was insufficient corroborative evidence that she would be subject to forced FGM. The RAD preferred country conditions evidence that it is up to a girl’s parents to decide whether she would be forced to undergo FGM, and noted that the PA and AA staunchly oppose it. Therefore, the RAD found there is no risk to the MA of FGM, or risk due to refusing FGM.

III. ISSUES

[24] The only issue that arises on this application is whether the RAD's determination was reasonable.

IV. STANDARD OF REVIEW

[25] The parties do not dispute that the appropriate standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 10, 16, 23, 25 [*Vavilov*].

[26] In conducting a reasonableness review, a court "must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified" (*Vavilov* at para 15). It is a deferential standard, but remains a robust form of review and is not a "rubber-stamping" process or a means of sheltering administrative decision-makers from accountability (*Vavilov* at para 13).

[27] Of importance to this matter, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to that facts and law that constrain a decision-maker" (*Vavilov* at para 85). Reasonableness review is not a "line-by-line treasure hunt for error" (*Vavilov* at para 102). Any flaws or shortcoming relied upon must be sufficiently central or significant, to render the decision unreasonable (*Vavilov* at para 100).

V. ANALYSIS

A. *The RAD's Assessment of the Kidnapping Attempt was Unreasonable in Light of the Documentary Evidence*

[28] As noted above, having found that the RPD erred in several respects, the RAD essentially accepted the factual underpinnings of the Applicants' claims. It found, however, that they had failed to credibly establish that there was an objective basis to these claims, on account of the documentary evidence. The evidence in question suggested that while individuals could *generally* refuse to assume the role of Shrine Priest, in some situations, the response to such a refusal could be "severe and deadly."

[29] Having characterized the Applicants' claims in this way, the principal determination for the RAD was therefore whether the PA was properly included in that cohort of individuals who could safely refuse to assume the Priest role, or whether this was a circumstance where refusing the role could be dangerous.

[30] This brings us to the kidnapping incident. As noted above, the RAD found that the RPD had erred in questioning whether this incident had occurred, but concluded that it warranted limited weight. It stated as follows:

Having considered this evidence of the attempted kidnapping, I do not place weight on it since there was no harm done to the PA as per his own testimony and that as reported by the newspaper article. The attempted kidnapping does not amount to persecution or harm, it would have shown that in January 2016, there was interest in returning the PA to his community. His attempted kidnapping does not identify his named agents of harm, though the newspaper article does mention the shrine followers were identified as one of the kidnappers caught; it does not demonstrate

his agents of harm, the four leaders identified in his testimony were responsible for that attempted kidnapping.

[31] I have three concerns with the above reasoning. First, I do not think it is reasonable to minimize the weight attributed to an attempted kidnapping, merely because it was unsuccessful. I also do not believe it is reasonable to suggest that the foiling of a kidnapping attempt means that “no harm” has been done. Taking the Applicants’ testimony at face value, the attempted kidnapping led them to believe that it was unsafe to continue to live in their home in Rivers State, and they moved that same month to Delta State.

[32] Second, it was unreasonable for the RAD to state that the attempted kidnapping “does not amount to persecution or harm.” In many circumstances, an attempted kidnapping may well amount to persecutory treatment, or treatment that may endanger an individual’s life. It was similarly unreasonable for the RAD to minimize the seriousness of this event by suggesting that it merely amounted to “an interest in returning the PA to his community.” With respect, regardless of motive, an attempt to kidnap an individual and forcibly relocate them against their will represents a serious infringement of liberty.

[33] It may be that the RAD meant to indicate in the above reasons that the kidnapping attempt does not, on its own, establish a forward-looking risk of harm. Depending on the evidence, this may be a reasonable determination. However, the RAD’s reasons lack clarity on this important point and, to this extent, they are unreasonable.

[34] Third, I find the RAD’s description of the perpetrators of the kidnapping attempt to be somewhat unintelligible. On the one hand, the RAD again minimized the relevance of the

incident by indicating that “his attempted kidnapping does not identify his named agents of harm...” In the same sentence, however, the RAD acknowledged that the newspaper article - which it found to be authentic - identified a shrine follower as one of the kidnappers. This fact connects the harm perpetrated against the PA (the attempted kidnapping) to the basis of his claim (his refusal to assume the Shrine Priest role). That being the case, the RAD’s subsequent finding that the attempted kidnapping attempt “does not weigh in favour of the Appellants’ claim” is unsupported by the very evidence it accepted.

[35] As noted above, the documentary evidence at issue in this matter was somewhat contradictory. As such, a central question for the RAD to determine was whether, in this case, the Applicants could refuse the Chief Priest role without consequences (as is common), or whether this was one of those rarer circumstances where such a refusal could be risky. In answering this question, it was imperative for the RAD to properly characterize the kidnapping attempt on the Principal Applicant. The RAD’s shortcomings in this regard render its conclusion unreasonable.

VI. CONCLUSION

[36] The RAD made numerous findings, several of which may have been reasonably available to it. This said, I find that the errors identified above are sufficiently central to the RAD’s conclusions, such that judicial intervention is warranted.

[37] The parties did not propose a question for certification, and I agree that none arises.

JUDGMENT in IMM-9759-23

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 is referred back for redetermination by a different decision-maker.
3. No question is certified for appeal.

"Angus G. Grant"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-9759-23

STYLE OF CAUSE: PROSPER ONORIOSE, ELO ONORIOSE AND
MITCHELLE ELOZINO KPAROBO ONORIOSE v THE
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