

Federal Court



Cour fédérale

Date: 20250402

Docket: IMM-12079-23

Citation: 2025 FC 614

Ottawa, Ontario, April 2, 2025

PRESENT: The Honourable Mr. Justice Favel

BETWEEN:

MICHAEL MOSHOOD OGUNWOLA

Applicant

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Michael Moshood Ogunwola, [Applicant], seeks judicial review of the Refugee Appeal Division's [RAD] August 29, 2023 decision [Decision]. The RAD upheld the Refugee Protection Division [RPD] determination that the Applicant is neither a Convention refugee, nor a person in need of protection within the meaning of the *Immigration and Refugee Protection Act*, SC 2001,

c 27 [IRPA], sections 96 and 97. The determinative issue in the RAD Decision is the viability of an Internal Flight Alternative [IFA] in Abuja.

[2] This application for judicial review is allowed. The Decision is unreasonable in its analysis of the first prong of the test for an IFA.

II. Background

[3] The Applicant is a 53-year-old Nigerian citizen, and a university educated computer and electrical engineer. He is a Christian who fears persecution by the Ogboni Society, which he alleges is pursuing him to fulfill his father's covenant to bring his first-born son, the Applicant, into the cult. The Applicant refused to join the cult as it is contrary to his Christian beliefs.

[4] The Applicant worked as a telecommunication engineer in the northern and western part of Nigeria for 14 years. In October 2013, he was contracted to do some work by an Igbo man, named Ifany, from eastern Nigeria. At the job site the Applicant encountered disturbances of the equipment, and overheard that people were looking for him. He left as soon as he was able to.

[5] The Applicant claims that Ifany is a member of the Ogboni Society and was the only person that knew the Applicant's whereabouts at that specific job site. Ifany is from Aba, which is thirty minutes from Port Harcourt, and an hour from Abuja.

[6] Upon returning home from this job, the Applicant attempted to find a doctor for his ill father. Due to his religious beliefs, the Applicant was unable to assist his father with the

traditional healing methods requested. The Applicant's father instead called upon the Applicant's step-sister to complete the traditional healing tasks. She fell ill within days and died in hospital.

[7] The Ogboni Society challenged the Applicant's father to fulfill his membership covenant to bring his first-born son into the cult. The Applicant returned to his home in the west, keeping a low profile by not going out of his house very often.

[8] While home, the Applicant was attacked twice within a three-month period. During the final attack, the Applicant was stabbed. The Applicant left the country for the United States. The mother of the Applicant's children stopped all communications with the Applicant after learning what had happened.

[9] The Applicant claims he received around ten threatening phone calls on his Nigerian phone from the Ogboni Society after he left the country. He broke the SIM card for this phone approximately one year after fleeing to the United States.

[10] While in the United States, the Applicant got married in December 2015. The Applicant's wife began a sponsorship process that ultimately failed due to the marriage breakdown. The Applicant then entered Canada requesting refugee protection.

[11] The Applicant's asylum claim was denied on March 17, 2022, on the basis of a viable IFA. However, on appeal the RAD could not assess credibility nor viability since the RPD had failed to record the hearing. On October 12, 2022, the RAD sent the claim back to the RPD for a *de novo* hearing.

[12] The *de novo* RPD hearing took place on April 5, 2023. On April 14, 2023, the Applicant's refugee claim was again denied. The RPD found some credibility concerns with the Applicant's claim, however, they accepted that the Applicant fears the Ogboni Society due to his father's vows to bring his son into the cult. Ultimately, the RPD dismissed the claim for the determinative issue of a viable IFA. The Applicant appealed once again to the RAD.

III. The Decision

[13] On August 29, 2023, the RAD dismissed the appeal. The RAD examined the two-prong test applied by the RPD in determining the Applicant had a viable IFA, stating:

[35] The two-pronged test for an IFA is well established. The panel must be satisfied that:

- 1) There is no serious possibility of the claimant(s) being persecuted in the proposed IFA location, and/or the claimant(s) would not be personally subject to danger of torture, a risk to life or a risk of cruel and unusual treatment or punishment in the proposed IFA location, on a balance of probabilities; and
- 2) The conditions in the part of the country considered to be an IFA must be such that it would not be objectively unreasonable, in all circumstances, including those particular to the claim, for the claimant(s) to seek refuge there.

[14] On the first prong, based on the totality of the documentary evidence including the National Document Package [NDP] for Nigeria, the RAD determined the Ogboni Society lacked the means, resources, and influence to locate the Applicant in Abuja. The RAD found that section 7.3.3 of NDP item 1.4, sets out the availability of state protection for those in the Applicant's circumstances.

[15] As for motivation, the RAD found the Applicant provided little credible evidence to establish that the Ogboni Society had pursued the Applicant once he left Nigeria.

[16] At the RPD hearing, the Applicant testified that he received approximately ten phone calls from Ogboni Society members up to almost one year after leaving Nigeria. However, the Applicant claims he eventually broke the SIM card for his Nigerian cell phone. The RPD panel did not accept the Applicant's explanation for this information being left out of the Basis of Claim narrative. Furthermore, the Applicant did not have the physical evidence nor details to present to the panel. The RAD agreed with this RPD assessment and determined the Applicant failed to demonstrate the motivation of the Ogboni Society to continue to pursue him.

[17] With the burden of proof on the Applicant, the RAD found no convincing evidence that the Ogboni Society had been seeking the Applicant since 2014. The RAD also found no evidence of the Ogboni Society's means and motivation to locate the Applicant in the IFA location. The Applicant's arguments were found to be insufficient to demonstrate that the RPD erred in its determination. The first prong of the test therefore failed.

[18] On the second prong of the test, the RAD found the RPD correctly concluded that Abuja is a viable IFA. The Decision states the Applicant has not met the high burden of proving it would be unreasonable in all circumstances for the Applicant to relocate to the proposed IFA. The RAD referenced objective evidence showing Abuja is a large urban centre with access to all services and treatment. The RAD also noted evidence of the Applicant's personal circumstances, "...speaks English and Yoruba fluently; 52-year-old university-educated in electrical and computer engineering; work experience in Nigeria, the USA and being employed as an

Electromechanical Technician in Canada since 2019; Christian and could practice his religion...”.

[19] Regarding the Applicant’s age as an impediment to finding employment, the RAD noted the Applicant failed to point to any specific evidence supporting this allegation. Furthermore, the RAD note that the RPD correctly considered the objective evidence, balancing these difficulties with the increased rate of employment for skilled workers with work experience. With no other evidence provided by the Applicant, the RAD found nothing to support arguments of age discrimination on appeal. The second prong of the test therefore failed.

IV. Issues and Standard of Review

[20] The sole issue for determination is whether the RAD erred in its application of the test for an IFA.

[21] The parties submit the applicable standard of review is reasonableness (*Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65, paras 16-17 [*Vavilov*]; Mason). I agree. The presumptive standard of review for the Decision is reasonableness. This matter does not engage one of the exceptions set out by the Supreme Court of Canada in *Vavilov*. Therefore, the presumption of reasonableness is not rebutted (at paras 16-17).

[22] A reasonableness review requires the Court to consider both the outcome of the decision and the underlying rationale to assess whether the decision, as a whole, demonstrates the three 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 (*Vavilov* at paras 15, 99).

[23] A decision will be unreasonable where there are shortcomings in the decision that are sufficiently central or significant (*Vavilov* at para 100). This includes a failure of rationality internal to the reasoning process, or a decision that is untenable in light of the relevant factual and legal constraints bearing upon it (*Vavilov* at para 101). This may include instances where the decision-maker has failed to account for the evidence before it (*Vavilov* at para 126).

[24] If the reasons of the decision-maker allow a reviewing Court to understand why the decision was made, and determine whether the decision falls within a range of acceptable outcomes, the decision will be reasonable (*Vavilov* at para 85-86). It is the Applicant's burden to show that the decision was unreasonable (*Vavilov* at para 100).

V. Analysis

(1) Applicant's Position

[25] The RAD unreasonably determined a viable IFA exists for the Applicant in Abuja, and that the Applicant can relocate without facing a risk of persecution, and without unreasonable or undue hardship.

[26] The RAD relied exclusively on section 7.3.2 of NDP item 1.4, "EASO Country of Origin Information Report – Nigeria Country Focus (2017)", assessing the relationship between the Ogboni Society and the Police. However, contradictory evidence raised by the Applicant on

appeal was not assessed. NDP item 13.13, “NDP: NGA200795.E Nigeria: Ogboni Society, including structure, rituals, ceremonies, current status, membership and the consequences of refusing to join or trying to leave (2021)”, an item dedicated exclusively to the Ogboni Society, demonstrates that law enforcement is careful in how it treats members of the Ogboni Society.

[27] The RAD’s determination that the influence of the Ogboni Society is declining was also unreasonable given this opposing evidence in NDP item 13.13. This Ogboni Society specific information demonstrates that the Ogboni Society is an "important and powerful traditional institution" in which the "highest position" is filled by the "most “respected” person" or the "elder and most powerful man". Also, according to NDP item 13.13 the Ogboni Society is "still active" today, "especially among the older generation".

[28] The Applicant should not be expected to gather more evidence than he did regarding the means and motivation of the Ogboni Society, especially when the evidence in NDP item 13.13 specifies there is "very little concrete information or evidence available about the Ogboni"; that the information available is "speculation"; that Ogboni members do not share the group's "secrets" with non-members; or, that its members are "bound by secrecy".

[29] The Applicant submits that the RAD erred in its analysis of both prongs of the IFA test. However, the IFA is a cumulative test. An error in any portion of the test renders the entire decision unreasonable and demands it be set aside as a whole (*Akinola v Canada (Citizenship and Immigration)*, 2019 FC 1308 at para 38 [*Akinola*]).

[30] On the first prong, the RAD failed to properly consider the motivation and reach of the Ogboni Society. The objective evidence in NDP item 13.13 suggests that "leaving the group attracts sanctions, especially [for] those who were born into the practice as a family religion", and that the nature of those sanctions is "not much in the public domain", but that people "likely to leave the group may" be "assassinat[ed]". This objectively demonstrates the motivation of the Ogboni Society towards someone in a similar circumstance to the Applicant.

[31] The RAD accepted that the Applicant fears the Ogboni Society due to his father's vows. In light of this, and together with NDP item 13.13, there is sufficient evidence to prove both the means and motivation to locate the Applicant in Abuja.

[32] In the second prong of the test, the RAD erred in assessing the personal circumstances of the Applicant and the country conditions. The Applicant cannot reasonably be expected to relocate to Abuja without facing unreasonable and undue hardship. This is evidenced based on both: 1) the country conditions in the proposed IFA; and 2) the Applicant's personal circumstances, including transportation and travel, language, education and employment, accommodation, religion, indigeneship status, and the availability of medical and mental healthcare.

[33] NDP item 12.6 section 5.3, illustrates that Abuja has a high level of employment competition, that employment information is exaggerated, and that rent is notoriously expensive. Non-natives face a huge cost of living, including prohibitive food costs, adding a significant layer of hardship to the Applicant's relocation.

[34] The RAD failed to conduct its own analysis of employment, relying instead on the RPD's conclusion that it would be objectively reasonable for the Applicant to relocate given the Applicant's skilled work experience. This is unreasonable, particularly given increasing unemployment rates in the proposed IFA.

[35] In terms of housing and infrastructure, the RAD did not reference these factors in its reasoning. NDP item 5.9 shows the housing need is rising by about 20% per year in Abuja, making it an expensive relocation city. These compelling factors meet the threshold of unreasonable and undue hardship.

[36] Finally, non-indigenes to Abuja face difficulty accessing government services such as education and healthcare. NDP item 13.1 shows this difficulty in accessing government services "...including police protection in case of ethnic violence".

[37] Together, the RAD's lack of regard for country conditions in Abuja, and its failure to personalize its analysis to the specific circumstances of the Applicant, renders its analysis of the IFA test erroneous, and the Decision unreasonable.

(2) Respondent's Position

[38] The objective evidence cited neither indicates the group's reach nor capacity to find the Applicant in the IFA. Rather, it confirms that state protection would be available to the Applicant. There is no error in the RAD's analysis.

[39] The RAD conducted its own review and assessment of the evidence in the record, providing sound reasons for its findings. These reasons follow an internal logic that is consistent with the law and the facts before it. The Applicant has not demonstrated any fatal flaws or serious shortcomings with the RAD's Decision.

[40] The Applicant failed to provide sufficient evidence, as is his onus to do, that the Ogboni cult has the means to locate him throughout Nigeria, and the motivation to pursue him to the IFA and harm him (*Leon v Canada (Citizenship and Immigration)*, 2020 FC 428 at para 13 [*Leon*]).

The RAD's conclusion was intelligible and justified based on the record, as follows:

- a) the Applicant did not adduce evidence that the Ogboni had remained interested in him since he left Nigeria in 2014;
- b) there was insufficient evidence to show the Ogboni has the means or motivation to locate him outside of Abeokuta, Ogun State;
- c) the objective evidence indicates the influence of the Ogboni cult has declined; and
- d) the objective evidence also indicates that state protection is available in Nigeria to those who are in the Applicant's circumstances.

[41] It was reasonable for the RAD to infer that the agents of persecution have no ongoing interest given the lack of any evidence of pursuit since the Applicant left Nigeria in 2014 (*Leon* at paras 16, 18 & 23). Further, the Applicant's arguments on this point must fail as they reiterate the same arguments made before the RAD and seek a reweighing of the evidence.

[42] On the second prong of the test, the RAD correctly outlined and applied the legal test, noting the Applicant has a high burden to demonstrate the IFA is unreasonable in his personal circumstances. The RAD considered the Applicant's language abilities, education, professional

skills, the accessibility of services, and his ability to practice Christianity in the IFA. The RAD's finding that these factors make the IFA reasonable is both intelligible and justified.

[43] The RAD considered the Applicants arguments relating to age, specifically finding that:

- a) the Applicant did not identify any sources to support a lack of protection against age discrimination in Nigeria;
- b) even in the absence of age discrimination protections, there is no evidence the Applicant's age would result in discrimination such that the IFA would not be viable;
- c) the Applicant failed to demonstrate an inability to find work in the IFA due to his age, such that it would render the IFA unreasonable; and
- d) while there might be difficulty finding employment, objective evidence indicates skilled individuals with extensive work experience, such as the Applicant, have a higher chance of finding employment.

[44] While the Applicant's circumstances may result in undue hardship resulting from loss of employment, or a reduced quality of life or aspirations, these do not make a proposed IFA unreasonable (*Adebayo v Canada (Immigration, Refugees, and Citizenship)*, 2019 FC 330 at para 51, citing *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, 2000 CanLII 16789 (FCA)). The RAD considered the Applicant's personal circumstances and determined that the IFA was not untenable.

[45] The onus was on the Applicant to advance actual and concrete evidence that the conditions in Abuja would jeopardize his life and safety in the proposed IFA. He simply failed to do so.

[46] None of the Applicant's arguments about housing, social services, employment prospects (outside of the argument about age discrimination), and cost of living were put to the RAD

for consideration, and cannot therefore impugn the RAD's decision (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 23-26; *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 49; *Gonzalez Perez v Canada (Citizenship and Immigration)*, 2024 FC 69 at paras 40-42).

[47] The Applicant has not exposed any fatal flaw or serious shortcoming in the RAD's reasoning. The Applicant is therefore submitting arguments amounting to a re-weighing of the evidence in his favour. However, that is not the role of this Court on judicial review.

(3) Conclusion

[48] The Decision is unreasonable in the assessment of the first prong of the test for an IFA. An error in either prong of the test renders the entire decision unreasonable (*Akinola* at para 38), since both prongs must be satisfied for a decision maker to reasonably determine an IFA is viable (*Miranda Martinez v. Canada (Citizenship and Immigration)*, 2025 FC 416 at para 18).

[49] The RAD did not undertake a reasonable assessment of the means and motive for the Ogboni Society to locate the Applicant. The RAD was presented with objective evidence of the Ogboni presence, influence, and capacity to locate a target, yet stated that the evidence indicated a decline in Ogboni Society influence, and no lack of state protection.

[50] The RAD did not demonstrate in its reasons that it considered the objective evidence that the Ogboni Society have an established presence in the IFA's. Nor did the RAD give any weight to objective evidence that the Ogboni Society is an important and powerful organization, that it

has many active members in institutional, political, and judicial positions of power, and that there is a struggle between the Ogboni Society and police in rural areas.

[51] Rather than assess the potential for secret branches in the consideration of an IFA, the RAD focused on NDP item 1.4, section 7.3.2 to determine that the Ogboni Society influence is declining, and that there is no evidence of a lack of state protection for someone in the circumstances of the Applicant. This ignored objective evidence pointing to the contrary, as set out in NDP item 13.13. The Decision is therefore unreasonable.

[52] As I have found that the first part of the test was not met, it is unnecessary to comment on the second prong of the test.

VI. Conclusion

[53] The Decision demonstrates a lack of a logical, coherent chain of reasoning relating to the means and motivation of the Ogboni Society to locate the Applicant, particularly in light of the contrary evidence. The Decision is therefore unreasonable in these circumstances.

JUDGMENT in IMM-12079-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed and the matter is remitted to a differently constituted panel of the RAD for redetermination.
2. There is no question for certification.

"Paul Favel"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

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