Federal Court  Cour fédérale

**Date: 20250605**

**Docket: IMM-12109-24**

**Citation: 2025 FC 1013**

**Ottawa, Ontario, June 5, 2025**

**PRESENT: The Honourable Madam Justice Blackhawk**

**BETWEEN:**

**PIUS CHUKWUEMEKA IKE**

**Applicant**

**and**

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] This is an application for judicial review of a decision dated February 14, 2024, by an Officer of Immigration, Refugees and Citizenship Canada ("Officer"), that denied the Applicant's application for a pre-removal risk assessment ("PRRA") ("Decision").

[2] The Applicant argued that the Decision breached procedural fairness because the Officer failed to conduct an oral hearing and made veiled credibility findings, and that the Decision was not reasonable because the Officer failed to consider the totality of the evidence.

[3] The Respondent argued that the Decision was procedurally fair and reasonable.

[4] For the reasons that follow, this application is dismissed.

## II. Background

[5] The Applicant is a 50-year-old Nigerian citizen. He left Nigeria on July 20, 2021.

[6] The Applicant was a businessperson in Nigeria, he purchased and sold goods on behalf of a store in Onitsha, Anambra State. His business required him to travel around the country frequently.

[7] The Applicant claimed that in 2018 or 2019 he was attacked on a bus while on a business trip to Abuja. The unknown assailants slapped him on his head and ears, and the injuries he suffered resulted in hearing loss in both ears. The Applicant was treated for injuries and a report was filed at a hospital in Awka, Anambra State. The Applicant claimed that following this attack he has suffered gradual hearing loss.

[8] The Applicant previously attempted to enter Canada on October 12 and November 24, 2022. He claimed refugee protection on both occasions; however, both claims were denied because the Applicant entered Canada through the United States, which rendered him ineligible pursuant to subsections 101(c) and (e) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*].

[9] The Applicant is subject to an exclusion order. He was provided an opportunity to submit a request for protection under the PRRA considerations. He submitted his PRRA on September 8, 2023.

[10] The Applicant is seeking protection under section 96 and subsection 97(1) of the *IRPA*. He alleged that he will be persecuted due to his hearing disability if he is returned to Nigeria, and he alleged risks of harm by members of the Boko Haram terrorist group.

[11] The Applicant claimed that he sustained an injury in 2018 or 2019 that caused gradual hearing loss.

[12] After leaving Nigeria in July 2021, the Applicant claimed that he contracted a cold while travelling through Mexico to Canada that caused total hearing loss in his left ear and significant hearing loss in his right ear.

[13] The Applicant also claimed that Boko Haram will harm him if he returns to Nigeria because he refused to work with them.

[14] The Applicant claimed that he met an individual who was associated with Boko Haram in March 2021. This individual attempted to recruit the Applicant by transferring money to his bank account. The Applicant returned the money and reported the incident to the police. Following this, the Applicant received threatening phone calls from individuals who indicated that they were affiliated with Boko Haram and threatened to kill him and his family.

[15] The Applicant went into hiding in Onitsha. Later in March 2021, Boko Haram claimed responsibility for the arson of a shop the Applicant used to work at. The Applicant then relocated to Lagos and later Abuja. He continued to receive threatening calls and changed his phone number; it is not clear if he continued to receive calls after this.

[16] The Applicant claimed that in 2022, his spouse told him that Boko Haram visited their family home in Onitsha looking for him and threatened to kill his family. The Applicant's family relocated to a village in Umudioka, Anambra State.

[17] The PRRA was refused on February 14, 2024. The Decision was communicated to the Applicant on March 13, 2024.

## III. Issues and Standard of Review

[18] The parties submitted, and I agree, that the applicable standard of review in this case is reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 25, 86).

[19] Reasonableness review is a deferential standard and requires an evaluation of the administrative decision to determine if the decision is transparent, intelligible, and justified (*Vavilov* at paras 12–15, 95). The starting point for a reasonableness review is the reasons for decision. Pursuant to the *Vavilov* framework, a reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85). To intervene on an application for judicial review, the Court must find an error in the decision that is central or significant to render the decision unreasonable (*Vavilov* at para 100).

[20] Generally, a PRRA officer's determination of risk is reviewed on a reasonableness standard because it is a question of mixed fact and law (*Kadder v Canada (Citizenship and Immigration)*, 2016 FC 454 at para 11).

[21] The standard of review for procedural fairness issues is correctness, or akin to correctness (*Vavilov* at para 53; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paras 54–56). The reviewing court must consider what level of procedural fairness is necessary in the circumstances and whether the "procedure followed by the administrative decision maker respect[s] the standards of fairness and natural justice" (*Chera v Canada (Citizenship and Immigration)*, 2023 FC 733 at para 13). In other words, a court must determine if the process followed by the decision maker achieved the level of fairness required in the circumstances (*Kyere v Canada (Public Safety and Emergency Preparedness)*, 2020 FC 120 at para 23, citing with approval *Mission Institution v Khela*, 2014 SCC 24 at para 79).

[22] The applicable standard of review to determine if an oral hearing ought to have been held has been the subject of much jurisprudence in this Court. A review of this jurisprudence reveals that to some extent, the applicable standard of review depends on the characterization of the issue—is it a breach of procedural fairness or a misapplication of section 167 of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*] (*Sallai v Canada (Citizenship and Immigration)*, 2019 FC 446 [*Sallai*] at paras 25–30; *Blidee v Canada (Citizenship and Immigration)*, 2019 FC 244 [*Blidee*] at para 11)? The prevailing view appears to be that, where the question is framed as a misapplication of the *IRPR*, reasonableness is the applicable standard of review. However, in this case, the issue has been framed as a breach of procedural fairness; accordingly, I will apply a correctness standard.

[23] The issues in this application are:

A. Was there a breach of procedural fairness?

    (1) Did the Officer make veiled credibility findings?

(2) Did the Officer breach the Applicant's right to procedural fairness by failing to hold an oral hearing?

B. Is the Decision reasonable?

(1) Did the Officer fail to consider the totality of the evidence?

## IV. Applicable Legislative Framework

[24] Subsection 112(1) of the *IRPA* permits a person subject to a removal order to apply for protection. Section 161 of the *IRPR* permits an individual applying for protection to make written submissions in support of their PRRA application and, subject to the conditions set out at paragraph 113(a) of the *IRPA*, identify evidence in support of their claim for protection.

[25] Section 114 of the *IRPA* confirms that the effect of a PRRA is to confer protection to an applicant by stopping the removal order against that individual.

[26] Section 167 of the *IRPR* sets out the factors to determine if an oral hearing under paragraph 113(b) of the *IRPA* is required. The following factors are considered:

i) is there evidence that raises a serious issue of the applicant's credibility, related to the factors set out at sections 96 and 97 of the *IRPA*?

ii) is the evidence central to the decision regarding the application for protection?

iii) if accepted, does the evidence justify allowing the application for protection?

[27] The Applicant suggested that to determine if a credibility finding has been made, one must consider the "specific language" used in the decision and its reasons. In the present case, the Applicant suggested that the Officer's language indicates that veiled credibility findings were made.

## V. Analysis

### A. *Procedural fairness—veiled credibility findings and refusal to hold an oral hearing*

[28] The Applicant argued that there was a breach of procedural fairness because the Officer failed to conduct an oral hearing, despite making a veiled credibility finding. In addition, they argued that the Officer mischaracterized the nature of the evidence from the Applicant's spouse and misunderstood the country condition evidence.

[29] The Respondent argued that the decision to hold an oral hearing is based on a consideration of paragraph 113(b) of the *IRPA* and the factors set out at section 167 of the *IRPR*. In the present claim, the Respondent argued that there was no breach of procedural fairness because no credibility findings were made to trigger a right to an oral hearing.

[30] The Officer noted in the Decision that "[t]he [A]pplicant has adduced evidence pertaining to the risk from Boko Haram as outlined in his narrative, however, for the reasons that follow, I am unable to find that this evidence provides a sufficient basis on which to approve this application for protection. The onus is on the [A]pplicant to present documentary evidence to support all of the risks articulated in his PRRA application, and I find that the [A]pplicant has not met this onus."

[31] The Applicant requested an oral hearing and submitted that an oral hearing would be appropriate, given that the PRRA was his first risk assessment, and he should have been provided an opportunity to respond to credibility issues.

[32] The Applicant acknowledged that the Officer did not make "direct credibility findings" but argued that the Officer made veiled credibility findings in finding that the Applicant had not

provided sufficient evidence to support his claim. The Applicant suggested that the Officer's determination that the Applicant had provided insufficient evidence of fear of persecution from Boko Haram made a veiled credibility finding. In support of his argument, the Applicant pointed to jurisprudence where this Court has highlighted that one must look beyond the language employed by the decision maker to determine its true meaning.

[33] In addition, the Applicant argued that the Officer did not accord sufficient weight to an affidavit from his wife that detailed threats faced from Boko Haram.

[34] Further, the Applicant argued that the Officer misapprehended the nature of his evidence, describing it as a "narrative," when it was set out in a sworn statement.

[35] A review of the Decision indicates that the Officer had concerns with some discrepancies between the Applicant's evidence and what was set out in the affidavit from his spouse. The Officer stated that "[o]verall, I find the spouse's written statement to be vague and not supported by corroborating evidence. As such, I find that there is not enough evidence to establish a forward facing risk for the [A]pplicant and I assign it little weight."

[36] The Respondent did not dispute that the spouse's evidence was present in an affidavit. Rather, they submitted that the decision maker has the discretion to assess the weight attributable to that evidence, in view of the contextual factors of the matter before them. In this case, the affidavit was vague and not supported by corroborative evidence, accordingly, the Officer was free to assign this evidence little weight.

[37] This Court has drawn a distinction between sufficiency of evidence and credibility. These are two different assessments:

> … A credibility assessment goes to the reliability of the evidence. When there is a finding that the evidence is not credible, it is a determination that the source of the evidence (for example, an applicant's testimony) is not reliable. Reliability of the evidence is one thing, but the evidence must also have sufficient probative value to meet the applicable standard of proof. A sufficiency assessment goes to the nature and quality of the evidence needed to be brought forward by an applicant in order to obtain relief, to its probative value, and to the weight to be given to the evidence by the trier of fact …
>
> (*Huang v Canada (Citizenship and Immigration)*, 2018 FC 940 at para 42)

[38] Madam Justice Catherine Kane recently set out key principles that can be observed from this Court's jurisprudence in *Sallai* at paragraph 57:

> … First, the onus rests on a refugee claimant to support their claim with sufficient evidence. Second, determining whether the decision-maker has based findings on insufficient evidence or credibility requires a case-by-case analysis which is not necessarily based on the terminology used, but on a careful reading of the decision-maker's assessment of the evidence in the context of the decision as a whole. Third, relying on a sworn statement and the presumption of truthfulness from *Maldonado* does not absolve a claimant from providing sufficient evidence to support their claim. A decision-maker need not doubt the credibility of a sworn statement to conclude that it remains insufficient to establish the allegations on a balance of probabilities. As noted in *Magonza* at para 34, "deciding whether the evidence is sufficient is a practical judgment made on a case-by-case basis". Fourth, like all factual findings, the decision-maker must provide an explanation for findings of insufficiency. Finally, deference is owed to the decision-maker in the determination of whether he or she is satisfied that a claimant has established their forward-looking risk of persecution.

[39] A review of the jurisprudence from this Court illustrates that an officer's conclusion that there is insufficient evidence is difficult to distinguish from a veiled credibility finding (see *Magonza v Canada (Citizenship and Immigration)*, 2019 FC 14 at paras 34–35). However, as noted by Madam Justice Sylvie Roussel in *Blidee*, it is important to not lose sight of first

principles, namely the presumption of the truth or reliability of statements made by refugee claimants (at para 16). However, this presumption ought not be confused or equated with the notion of sufficiency of evidence. Ultimately, the onus rests on an applicant to support their claim with sufficient evidence and to put their best foot forward. A failure to provide clear details or corroborating materials may be a basis for finding the evidence is insufficient. As noted by Justice Russel Zinn in *Ferguson v Canada (Citizenship and Immigration)*, 2008 FC 1067 at paragraph 27:

> Evidence tendered by a witness with a personal interest in the matter may also be examined for its weight before considering its credibility because typically this sort of evidence requires corroboration if it is to have probative value. If there is no corroboration, then it may be unnecessary to assess its credibility as its weight will not meet the legal burden of proving the fact on the balance of probabilities. When the trier of fact assesses the evidence in this manner he or she is not making a determination based on the credibility of the person providing the evidence; rather, the trier of fact is simply saying the evidence that has been tendered does not have sufficient probative value, either on its own or coupled with the other tendered evidence, to establish on the balance of probability, the fact for which it has been tendered. That, in my view, is the assessment the officer made in this case.

[40] The Applicant asserted that the discrepancies in the evidence were minor. I do not agree.

[41] The Applicant provided an affidavit from his spouse that purports to set out details of harassment and threats from Boko Haram directed towards the Applicant. However, the Officer found that the affidavit contains some discrepancies from the Applicant's narrative including the date of the incident with the individual associated with Boko Haram; the owner of the place of business that was the victim of arson; and details of damage to the property in the compound during the 2020 attack from members of Boko Haram. Further, the Officer noted that the affidavit is "vague and not supported by corroborating evidence."

[42] It was open to the Officer to assign the affidavit little weight, given the discrepancies noted. The Officer correctly concluded that the affidavit does not have sufficient probative value, and their reasons clearly explain why little weight was assigned to this evidence.

[43] In my view, little turns on the Officer's description of the Applicant's sworn evidence as a "narrative." It is well established that when an applicant swears to the truth of certain allegations, this creates a presumption of truthfulness (*Maldonado v Minister of Employment and Immigration* (1979), [1980] 2 FC 302, 1979 CanLII 4098 (FCA)). However, as explained above, truthfulness does not equate to sufficiency.

[44] It was open for the Officer to require more evidence to satisfy the legal burden. The Officer noted that the Applicant did not submit copies of police reports or bank records that could have corroborated his account. I appreciate that persons claiming refugee status may have difficulty obtaining records to corroborate their narrative, as has been observed by this Court, however, there is nothing in the record to explain why those records were not included in support of the Applicant's claim. The Officer's reasons for determining that there was insufficient evidence are clear.

[45] Finally, the Officer reviewed the evidence of country conditions, specifically regarding Boko Haram and insecurity in Nigeria. The Officer found that the bulk of the documentation submitted set out "generalized risk faced by all population [*sic*] in Nigeria and is not personalized to the [A]pplicant." The Officer noted that the objective documentary evidence indicates that the influence of Boko Haram is "largely confined to the North Eastern States, while areas in central and southern Nigeria are generally not directly affected." In addition, the

Officer noted that some of the articles were dated and spoke to incidents of violence in Northeastern States, not in the area that the Applicant was from.

[46] The Applicant's narrative supported the Officer's finding that his last contact with members of Boko Haram took place in May 2021. All threats were by phone, and he only met a member of the organization once when he traveled to Borno State in the Northeast of Nigeria. In other words, his encounter with one member of Boko Haram was isolated. The Officer noted that the Applicant changed his phone number and relocated to Abuja in June 2021, when contact appeared to stop. There was one last encounter with Boko Haram in 2022, when members visited the Applicant's compound in Nigeria and threatened his spouse and children. His family has since relocated to Anambra State. There was no evidence of further, ongoing, or forward facing risks to the Applicant.

[47] A review of the Decision indicated that the Officer did not make any explicit reference to credibility. The Officer did not indicate that he did not believe the Applicant's account. The reasons also indicate that the Officer considered the evidence provided by the Applicant in support of his claim, including the sworn statement from his spouse and country condition documents. The Officer's reasons repeatedly indicate that this evidence was lacking.

[48] I agree with the Respondent that the Officer did not make a veiled credibility finding. Accordingly, the obligation to have an oral hearing pursuant to section 167 of the *IRPR* was not triggered in this case.

[49] Further, the fact that the Applicant requested an oral hearing does not require an Officer to conduct an oral hearing. Where there is no credibility issue, there is no obligation to conduct

an oral hearing. As noted by Madam Justice Vanessa Rochester in *Balogh v Canada (Citizenship and Immigration)*, 2022 FC 447 at paragraph 25:

> A request for an oral hearing by an applicant does not trigger a hearing. The prescribed factors under s. 167 of the *Regulations* either exist on the facts of a particular case or they do not. If there is no issue of credibility, then it should not be unreasonable for an officer to decline to hold an oral hearing – regardless of whether there is a request for one or not. This Court has found that where credibility is not in issue, an officer is not obliged to explain why an oral hearing has not been provided (*Ghavidel v Canada (Citizenship and Immigration)*, 2007 FC 939 at para 25 [*Ghavidel*]; *Csoka v Canada (Citizenship and Immigration)*, 2016 FC 653 at para 14; *Forbes v Canada (Immigration, Refugees and Citizenship)*, 2021 FC 1306 at para 29–31 [*Forbes*]). Justice de Montigny has noted that to make it compulsory to explain why an oral hearing was not provided would add to the already heavy burden of PRRA officers (*Ghavidel* at para 25). This is especially the case "when a careful reading of the reasons makes it clear that credibility was not an issue" (*Ghavidel* at para 25). While addressing a request for a hearing in a decision may well be preferable (*Ghavidel* at para 25), the failure to address such a request, where a veiled credibility finding is not a determinative factor or credibility is not an issue, is insufficient to render a decision as a whole unreasonable or procedurally unfair (*Hare* at para 32–36; *Forbes* at para 31).

[50] The onus was on the Applicant to establish his claim with evidence that would satisfy the evidentiary and legal burdens. The Applicant has failed to demonstrate that there was an issue with his credibility that would trigger an obligation to have an oral hearing. Therefore, the Officer correctly concluded that an oral hearing was not required.

[51] Overall, the Applicant has not established a breach of procedural fairness.

B. *Reasonableness*

[52] The Applicant argued that the Decision is unreasonable because the Officer failed to apply the proper framework for corroborative evidence and/or the Officer failed to consider the totality of the evidence.

[53] The Respondent argued that the Decision is reasonable, as the Officer reviewed all the evidence and reasonably concluded that the risks to the Applicant because of his hearing impairment were manageable. Further, the Officer reasonably found that the alleged threats from Boko Haram were not ongoing or forward facing. In other words, there was no evidence to support that the agents of harm were motivated to pursue the Applicant.

[54] The Respondent argued that the Applicant is asking this Court to reweigh the evidence in this application for judicial review, which is not the proper role of a reviewing court.

[55] The Applicant argued that he is essentially deaf because of his hearing impairment, and he would face discrimination amounting to persecution if he were to return to Nigeria.

[56] The Applicant's evidence is that his hearing impairment was gradual. When he left Nigeria, he still had partial hearing and was able to function normally. During his travels to Canada, he lost complete hearing in his left ear and most hearing in his right ear. The Applicant does not know sign language and communicates primarily in writing.

[57] The Officer noted that the Applicant submitted articles that speak to the treatment of persons with disabilities in general in Nigeria; however, the articles did not speak to deafness. Accordingly, the Officer assigned these materials little weight.

[58] The Officer also noted that the report produced by Asylos and Asylum Research Centre, while addressing deafness, focused on children; accordingly, the Officer did not find this relevant, as the findings were dedicated to "children and youth and the developmental impacts of deafness." Similarly, the literature review submitted focused on the impacts of deafness on youth and the findings proposed solutions to mitigate the impacts and advocate for early childhood screening; intervention programs are not applicable to an adult who became deaf later in life.

[59] In addition, the Officer noted that the Applicant "is an adult in his fifties, who is literate and whose education and access to medical care were not affected by his loss of hearing." The Officer noted that while his hearing impairment was not as severe while he was in Nigeria, he was able to communicate and conduct business in Nigeria after the incident in 2018 or 2019 that lead to his hearing impairment up to his departure in July 2021. The Officer noted that "the [A]pplicant requires accommodations when it comes to oral communication."

[60] However, the Officer also noted that the Applicant has not included a formal diagnosis or any report as it pertains to his situation and progressing hearing loss in his evidence.

[61] Finally, while the Officer acknowledged that "the situation in Nigeria with respect to people with disabilities is not ideal" and "the [A]pplicant will face integration difficulties upon his return to Nigeria," the Applicant failed to provide objective evidence of persecution.

[62] The Applicant bears the burden to present evidence to support his claim and to put his best foot forward. The Applicant's arguments of discrimination are speculative and are not grounded in evidence.

[63] It was reasonable for the Officer to assign little weight to the Applicant's evidence as it focused on the general impacts of disability and the implications of hearing disability on youth in Nigeria. The Applicant failed to put forward evidence that spoke to the individual harms he, as an educated adult, would suffer in Nigeria because of his hearing loss.

[64] It was reasonable for the Officer to conclude that the Applicant failed to provide sufficient evidence to support his claim of discrimination on the basis of a disability. The Officer's reasons are justified, intelligible, and transparent.

[65] In addition, the Applicant argued that the Officer did not reasonably consider the evidence concerning his fear of persecution from members of Boko Haram.

[66] As noted above, the Officer found that the Applicant had not provided sufficient evidence to support his claim. In particular, the Officer assigned little weight to the affidavit evidence from his spouse, found that the claims were not supported by corroborating evidence, and found that objective country condition evidence did not support that the Applicant would not have protection.

[67] The Officer's reasons are transparent, intelligible, and justified. The Officer clearly stated why they determined the Applicant did not satisfy their evidentiary burden in this matter. The Applicant's sworn statement is not supported by corroborating evidence such as copies of police reports or bank records; the affidavit from his spouse contains several discrepancies; and the country condition evidence was dated, spoke to generalized risks and pertained to regions in the northeastern part of Nigeria.

[68] In my view, the Decision is reasonable, and the reasons illustrate that the Officer considered the totality of the evidence presented and considered the applicable factual and legal constraints.

## VI. Conclusion

[69] The Applicant does not agree with the Decision; however, a holistic review of the Decision and the record illustrates that the Officer conducted a complete and detailed assessment of the evidence, and their conclusions are reasonable. In other words, the Decision is justified, transparent, and intelligible, and there is no reviewable error to justify the Court's intervention.

[70] Further, there has not been a breach of procedural fairness. The Applicant did not establish that the Decision was a veiled credibility finding, such that it would trigger the obligation to hold an oral hearing pursuant to section 167 of the *IRPR*.

[71] Considering the foregoing, this application for judicial review is dismissed.

[72] The parties did not pose any questions for certification, and I agree that there are none.

**JUDGMENT in IMM-12109-24**

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

1. The application for judicial review is dismissed.

2. No question is certified.

"Julie Blackhawk"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | IMM-12109-24 |
| **STYLE OF CAUSE:** | PIUS CHUKWUEMEKA IKA v THE MINISTER OF CITIZENSHIP AND IMMIGRATION |
| **PLACE OF HEARING:** | OTTAWA, ONTARIO |
| **DATE OF HEARING:** | MAY 1, 2025 |
| **JUDGMENT AND REASONS:** | BLACKHAWK J. |
| **DATED:** | JUNE 5, 2025 |

**APPEARANCES:**

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|---|---|
| Daniel Epstein | FOR THE APPLICANT |
| Larry Wu | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Integrated Legal Services Office<br>Legal Aid Ontario<br>Barristers and Solicitors<br>Ottawa, Ontario | FOR THE APPLICANT |
| Attorney General of Canada<br>Ottawa, Ontario | FOR THE RESPONDENT |