

Federal Court



Cour fédérale

Date: 20250617

Docket: IMM-3093-23

Citation: 2025 FC 1089

Ottawa, Ontario, June 17, 2025

PRESENT: The Honourable Madam Justice Blackhawk

BETWEEN:

**PRASHAD SOPARKRIBO BOYLE
OIZA HABIBA BOYLE
WINSTON TAMUNO IPALIBO BOYLE
WILLIAM TAMUNO TONYE BOYLE**

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] This is an application for judicial review of a decision of the Refugee Appeal Division (“RAD”) dated February 24, 2023, that dismissed the Applicants’ appeal and upheld the findings of the Refugee Protection Division (“RPD”) that the Applicants are neither Convention refugees nor persons in need of protection (“Decision”).

[2] The Applicants are challenging the reasonableness of the Decision.

[3] The Respondent argues that the Decision was reasonable.

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

II. Background

[5] Prashad Boyle (“Principal Applicant”), Oiza Boyle (“Associate Applicant”), and Winston Boyle and William Boyle (“Minor Applicants”) are citizens of Nigeria (collectively, the “Applicants”).

[6] The Applicants allege fear of persecution in Nigeria from the Special Anti-Robbery Squad (“SARS”) and the Nigerian army, based on imputed political opinion alleging the Principal Applicant is a member or supporter of the Indigenous People of Biafra (“IPOB”) separatist organization.

[7] Briefly, the Applicants alleged that on November 20, 2016, SARS officers and the Nigerian Army had entered their compound and were shooting into the air and into buildings. The Principle Applicant took his boys, who were playing outside, into the house. The Principle Applicant found the Associate Applicant and their daughter outside, they had been drying clothing. The Associate Applicant was screaming in and crying for help. The Principal Applicant was hit on the head and held captive for five days by the Army and SARS officers, who demanded money and accused him of supporting the IPOB, which he denied. While in captivity he was beaten and threatened. The Principal Applicant escaped with another captive and eventually made it to his father’s home. There he learned from the Associate Applicant that his daughter had been struck by a stray bullet during the November 20, 2016 attack and had been killed, she was buried that same day (“Incident on November 20, 2016”).

[8] Following the Incident on November 20, 2016, the Principal Applicant reported the event to police at the station on Port Harcourt. The police took his statement but detained him, as there was a bounty on IPOB activists. The Principal Applicant denied that he was an activist, but advised police there was such a person in his compound. The police demanded money, and then advised him to go into hiding, or he would risk being shot or detained.

[9] The Applicants departed Nigeria for the United States on January 19, 2018. They entered Canada and made refugee protection claims in early February 2018.

[10] The Minister of Public Safety and Emergency Preparedness intervened before the RPD based on credibility. The RPD rejected the Applicants' claims based on credibility.

[11] The Applicants appealed the RPD decision to the RAD. They did not submit new evidence or request an oral hearing.

[12] The RAD dismissed the appeal, finding that the RPD did not fail in its assessment of the Applicants' credibility. This is the Decision under review in this application.

III. Issues and Standard of Review

[13] The sole issue for determination is: was the Decision reasonable?

[14] The parties submit, 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).

[15] 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).

[16] 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).

IV. Analysis

[17] The Applicants argued that the RAD erred in concluding that the Principal and Associate Applicants were not credible. They argued that the board must review their actions in a manner that is sensitive to their cultural diversity. They argued that the Principal Applicant’s testimony cannot be rejected due to a lack of corroborative evidence. In addition, they argued that the RAD’s failure to apply the *Guidelines Concerning Women Refugee Claimants Fearing Gender-Related Persecution* [*Gender Guidelines*] is a reviewable error of law (*Chairperson’s Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board - Immigration and Refugee Board of Canada*).

[18] The Applicants also argued that the RAD failed to consider the RPD’s potential bias, which influenced their credibility assessment. Finally, they argued that the RAD failed to consider the impact of incompetent counsel.

[19] The Respondent argued that the credibility findings were reasonable and that it was open to the RAD to require corroborative evidence. Further, they argued that the allegations of bias

and incompetent counsel were not properly before the RAD. Finally, they note that there is a presumption that the *Gender Guidelines* were considered.

A. *Credibility findings*

[20] The Applicants argued that the RAD erred in making credibility findings concerning their use of the terms “compound” and “house,” which they argued are used interchangeably.

[21] The Respondent submitted that the Principal Applicant provided inconsistent evidence of where he was when the Incident on November 20, 2016 began; particularly, there was inconsistent evidence concerning if he was in his house or his compound.

[22] With respect to the findings on credibility, the RAD noted that:

... I disagree that the [Applicants] arrived at the hearing before the RPD with a *prima facie* case for protection because the process of determining whether a claimant is a Convention refugee or a “person in need of protection” under the *Immigration and Refugee Protection Act* (IRPA) requires the [RPD] to decide whether the claimant’s evidence is believable and how much weight to assign to that evidence. In determining this, RPD members must assess the credibility of the claimant, other witnesses and the documentary evidence. The RAD assesses whether the RPD decision, including credibility findings, is wrong in law, in fact or in mixed law and fact.

[23] The RPD found that the Principal Applicant’s narrative was inconsistent because his narrative in his Basis of Claim (“BOC”) and his testimony differed, including the use of the terms “compound” vs “house.” The Principal Applicant was asked about the inconsistency, and counsel for the Applicants made submissions that indicated that “compound” is often used to describe property with more than one building.

[24] The RAD found that “the Principal [Applicant] drew a clear distinction between his compound and the [Applicants’] house such that he was not using the words interchangeably.” Therefore, the RAD “[did] not find it was a cultural choice of words.” The RAD did not find that the RPD erred in impugning the Applicants’ credibility, as the inconsistencies between the BOC and the Primary Applicant’s testimony were not peripheral to their refugee claim; rather, these were “facts that directly concern the very basis of a claim for refugee protection.”

[25] The RAD noted that the location of the Applicants at the time of the gunshots that lead to the Incident on November 20, 2016, that form the basis of the refugee claim, were important because the shooting precipitated the death of the Applicants’ daughter, and the alleged kidnapping of the Principal Applicant. The RAD noted that this would be an important detail that would have been recollected with consistency.

[26] In support of this position, the RAD cited *Kambanda v Canada (Citizenship and Immigration)*, 2012 FC 1267, where this Court held that “[n]ot every kind of inconsistency will reasonably support a finding of credibility, since a microscopic examination of peripheral issues would be improper” (at para 42). The Court went on to clarify that that inconsistencies that are relevant and central to the claim of state protection are not a microscopic examination (at paras 43–47).

[27] In my view, the RAD’s reasons for Decision are intelligible, justified, and transparent. It was open to the RAD to draw a negative inference from the contradictory accounts between the Principal Applicant’s BOC and testimony.

B. *Corroborating evidence*

[28] The Applicants argued that it was not reasonable for the RAD to require corroborating evidence to support their claim, as they were grieving the loss of their daughter.

[29] The Respondent argued that it was reasonable for the RAD to require corroborative evidence, considering the concerns with the credibility of the Applicants' claim.

[30] A review of the Decision indicates that the RAD drew negative inferences from the following:

- a) The Applicants' failure to provide a hospital certificate setting out their daughter's treatment following the Incident on November 20, 2016;
- b) The Applicants produced their daughter's birth and death certificates. When asked why they failed to produce a hospital certificate, they indicated they had not thought about this. However, they provided a medical report for the Principal Applicant to support his claimed injuries; and
- c) There were concerns regarding their daughter's death certificate, specifically that important identifiers that should have been on the certificate as set out in the National Documentation Package (NDP) were missing.

[31] A review of the Decision illustrates that the RAD provided intelligible, justified, and transparent reasons for assigning little weight to certain evidence and expecting that the Applicants' claim would be supported by corroborating evidence. The RAD clearly set out its concerns with respect to the credibility of the Applicants' claim.

[32] The Applicants bear the onus to establish their claim. It was open to the RAD to require evidence to corroborate the claim. The RAD clearly explained why this was necessary (*Musoro v Canada (Citizenship and Immigration)*, 2022 FC 1725 at paras 41–44; *Ye v Canada (Citizenship and Immigration)*, 2022 FC 1767 at paras 40–43).

[33] I appreciate that the Applicants were mourning the loss of a daughter. However, it is unclear why they requested a relative to provide them copies of a death certificate, but not the hospitalization records. Further, it is not clear why the death certificate lacks certain indicia the NDP indicates are present on authentic documentation.

C. *Bias and incompetent counsel*

[34] The Applicants argued that the RPD member was biased. They also suggested that the same member who heard and considered their application at the RPD heard the appeal at the RAD.

[35] In addition, the Applicants argued that they had incompetent representation before the RPD.

[36] The RAD found that the Applicants' arguments concerning bias from the RPD, specifically that the RPD was prejudiced and predisposed to reject their claims without regard to the evidence, was "vexatious" and "unsubstantiated by the evidence on the record."

[37] The RAD noted that the RPD assessed the Applicants' credibility in relation to the evidence submitted and the allegation was not substantiated by evidence.

[38] The Respondent argued that this is the first time the Applicants' have raised both of these issues.

[39] I have reviewed the record and note that the allegation of incompetent counsel and the allegation that the same member heard their application at the RPD and the RAD were not raised before the RAD. In other words, the Applicants' raise these issues for the first time on judicial review.

[40] Generally, a judicial review is conducted based on the record that was before the original decision-maker (*Vavilov* at para 99; see also *Singh v Canada (Citizenship and Immigration)*, 2023 FC 875 at paras 27–61). The reasonableness of an administrative decision is generally not impugned based on a new issue (*Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 99).

[41] Reviewing courts have discretion to consider an issue raised for the first time on judicial review, this is an extraordinary and discretionary consideration (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta Teachers*] at para 22).

[42] Courts will only exercise their discretion in exceptional cases. Where an issue could have been but was not raised for the administrative decision maker, a Court ought not exercise its discretion (*Alberta Teachers* at para 24). Otherwise, a reviewing court is deprived of the benefit of the views of the expertise of the specialized tribunal charged by Parliament to consider these matters. Further, the Court must consider the prejudicial effects of hearing an issue on judicial review for the first time.

[43] In my view, allegations that the same member considered the Applicants' claim at the RPD and RAD could have and should have been raised before the RAD, and it is inappropriate for the Applicants to raise this issue for the first time in an application for judicial review. I will

note that the record clearly demonstrates that the same member did not hear the RPD application and the appeal at the RAD.

[44] Similarly, the Applicants have not demonstrated that allegations concerning the incompetence of counsel were raised with the RAD. This issue also could have and should have been raised before the RAD and it is not appropriate to raise now.

[45] In addition, the Respondent correctly noted that there is no evidence that the Applicants have followed this Court's protocols regarding allegations of incompetent counsel (*Makvanav v Canada (Citizenship and Immigration)*, 2023 FC 664 at paras 20–23).

D. *Application of Gender Guidelines*

[46] The Applicants argued that the RAD failed to consider the *Gender Guidelines*, particularly the loss of their daughter and the impact on the Associate Applicant.

[47] The Respondent argued that the Applicants have failed to overcome the general presumption that the RAD considered all evidence before it in rendering its Decision, even where a specific piece of evidence is not referenced in the reasons.

[48] A review of the Decision supports that the RAD considered all evidence presented and rendered a decision in line with the *Gender Guidelines*.

[49] Ultimately, the RAD agreed with the RPD's finding that impugned the credibility of the Incident on November 20, 2016. The RAD agreed that corroborative evidence to support the claims was therefore needed, and they drew a negative credibility inference due to the lack thereof. Documentary evidence in support of the claim, such as the death certificate, were given little weight due to credibility concerns.

[50] I agree with the Respondent that the Applicants' concern appears to be the weight assigned to the evidence, they have not pointed to a particular reviewable error.

[51] In my view, the Decision sets out the reasons why some evidence was accorded little weight in an intelligible, justified, and transparent manner. The Decision is reasonable, and the Applicants have not pointed to a reviewable error that would warrant this Court's intervention.

[52] I agree that it is important to assess claims by considering the unique challenges faced by female asylum seekers. However, the record for this matter does not support that gender-based arguments were advanced by the Applicants, nor were gender-specific concerns raised as part of their claim. The Applicants have not pointed to specific guidelines that they argue were not properly considered. In my view, this argument is underdeveloped. The record illustrates that the RAD was live and sensitive to the loss of the Applicants' daughter. The Applicants have failed to persuade me that the RAD committed a reviewable error that warrants this Court's intervention.

V. Conclusion

[53] The Decision is reasonable. A review of the reasons illustrates that the Decision is intelligible, justified, and transparent. I understand that the Applicants are not happy with the Decision, and they disagree with the credibility findings and the weight accorded by the RAD to certain evidence. However, they have not persuaded me that the RAD conducted a reviewable error that would warrant this Court's intervention in this application.

JUDGMENT in IMM-3093-23

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

DOCKET: IMM-3093-23

STYLE OF CAUSE: PRASHAD SOPARKRIBO BOYLE ET AL. v
THE MINISTER OF CITIZENSHIP AND
IMMIGRATION

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