

Federal Court



Cour fédérale

Date: 20260210

Docket: IMM-5012-25

Citation: 2026 FC 191

Ottawa, Ontario, February 10, 2026

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

OYEYEMI MOYINOLUWA FAOYE

Applicant

and

**THE MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

[1] The Applicant, a 38-year-old citizen of Nigeria, seeks judicial review of a decision by the Refugee Appeal Division [RAD] dated February 11, 2025, confirming the decision of the Refugee Protection Division [RPD] refusing the Applicant's claim for refugee protection under section 96 and 97(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. The RAD agreed with the RPD that the Applicant is excluded from refugee protection under Article 1F(b) of the United Nations' *Convention Relating to the Status of Refugees*, July 28, 1951,

[1969] Can TS No 6 [*Refugee Convention*], for there being serious reasons for considering that she has committed a serious non-political crime — namely, child abduction.

[2] The Applicant asserts that the RAD's decision was unreasonable as: (a) the RAD erred in its assessment of the Applicant's credibility; and (b) the RAD made a number of errors in determining that the Applicant's conduct amounted to the commission of a serious non-political crime.

[3] For the reasons that follow, I find that the Applicant has failed to demonstrate any basis for this Court's intervention. Accordingly, the application for judicial review shall be dismissed.

I. Background

[4] The Applicant states that, while in Nigeria, she was in a secret relationship with a female friend from 2009 to 2013. Afterwards, the Applicant entered into a relationship with a man, whom she asserts harassed her and subjected her to violence. As a result, she fled to the United States in April 2018 on a visitor visa valid until January 2020.

[5] In the United States, the Applicant entered into a brief relationship with a man. They had one child together, a son, born in Texas in 2020. While in the United States, the Applicant's son resided with his mother but regularly saw his father, Iyanu Ezekiel Ogunboye [Mr. Ogunboye], on weekends.

[6] The Applicant states that she had received threats from Mr. Ogunboye's girlfriend, who warned that she would report the Applicant to immigration authorities for not having lawful immigration status in the United States. However, there was no active removal order for the Applicant in the United States and, by March 2022, Mr. Ogunboye was no longer with this girlfriend.

[7] The Applicant states that between February and March 2022, she saw strangers following her in a car on four separate occasions. She notified the Texas police, who "gave [her] a brochure with a handwritten number" but she never returned to the police station to make a report.

[8] On March 8, 2022, the Applicant advised Mr. Ogunboye that she needed to take a short trip to Washington, D.C., to renew her Nigerian passport. She asked him to sign a travel consent form for their son. He responded that he did not need to sign such a form as she was travelling with their son within the United States.

[9] In Washington, however, the Applicant took no steps to renew her passport. Rather, on March 31, 2022, she booked a flight with her son to Canada without notifying Mr. Ogunboye. Upon booking her travel, the Applicant turned off her phone thereby missing numerous calls and texts from Mr. Ogunboye.

[10] On April 1, 2022, the Applicant travelled to the Canada-United States border with her son, without Mr. Ogunboye's consent, and claimed refugee protection for herself based on her fear of persecution by the Nigerian authorities "as well as overall Nigerian society" due to her

sexual orientation as a bisexual female. She also claimed refugee status for her son, asserting that her son would face harm in the United States due to being separated from his mother, conflict between his parents, his father's work schedule as a long-haul truck driver, the fact that his father's current partner had two children of her own, and his race and sex as a Black male.

[11] While attempting to enter Canada, the Applicant was detained. She was interviewed by a border officer on April 3, 2022 and, when asked if she had consent from Mr. Ogunboye to travel with their son, she said "no" because she had sole custody (which was untrue). The border officer called Mr. Ogunboye, who stated that he had not consented to the Applicant taking their son to Canada. The Applicant told the border officer that she had not asked for Mr. Ogunboye's consent as she anticipated that his consent would not be given. The Applicant subsequently communicated with Mr. Ogunboye by phone and text and, following a second call from the border official on April 3, 2022, Mr. Ogunboye consented to his son entering Canada.

[12] The Applicant and Mr. Ogunboye exchanged messages for the next two months until an argument occurred, in early June 2022, at which point the Applicant blocked Mr. Ogunboye on her phone and prevented him from having any further contact with their son.

[13] In August 2022, Mr. Ogunboye commenced a custody application in the District Court, 247th Judicial District in Harris County, Texas [Texas Court]. The Applicant participated in the Texas Court proceeding with legal counsel and both parties gave evidence.

[14] On October 10, 2022, the Texas Court ordered that Mr. Ogunboye have the exclusive right to designate the primary residence of the son in Texas (within Harris County and its contiguous counties) until such time as the Applicant returned the son to Texas. Upon the son's return, the order could be reviewed. The Texas Court also ordered Mr. Ogunboye to transport the son to Ontario so that the Applicant could have parenting time on the third weekend of each month, including holidays, in Ontario [Texas Order]. The Applicant, however, did not comply with the Texas Order. She did not deliver the son to his father and took no steps to deliver the documentation that would permit his return to the United States.

[15] Instead, on October 13, 2022, the Applicant filed an application in the Ontario Court of Justice [OCJ] seeking essentially the same relief that the Texas Court had just adjudicated upon. The Applicant sought primary residence and decision-making responsibility for her son, as well as child support. In her application to the OCJ, the Applicant failed to mention the Texas Court proceeding or the resulting Texas Order.

[16] On December 28, 2022, Mr. Ogunboye brought a cross-motion and an application under the *Convention on the Civil Aspects of International Child Abduction*, October 25, 1980, [1983] Can TS No 35, in the OCJ proceeding, seeking the return of his son to the United States.

[17] On January 30, 2023, the OCJ issued its Reasons for Decision. The OCJ found that the Applicant had “acted in a deceitful and dishonest manner” and that the evidence established that she was “prepared to do or say anything she believes will achieve her objectives.” Absent independent corroboration, the OCJ did not accept the Applicant's evidence and instead found:

[121] Evidence of the mother's deceit and dishonesty includes the following:

- a) She tried to permanently enter Canada with the child without the father's consent. She did not seek the father's consent prior to April 3, 2022 because she knew he would say no.
- b) She first tried to obtain the father's consent to travel on March 8, 2022, by telling him that she needed this document to travel to Washington D.C. to renew her international passport. The father did not provide this consent when he learned that a travel consent was not necessary for the mother to travel within the United States. The mother probably would have used this consent to enter Canada with the child.
- c) She did not travel to Washington D.C. to renew her passport, as she had told the father.
- d) She consulted with friends and learned that Canada has friendlier immigration policies than the United States. She had worked in the United States for four years and acknowledged that nothing had changed – no one was taking steps to ask her to leave the United States. Instead of taking steps to regularize her immigration status in the United States she chose to surreptitiously come to Canada with the child and make refugee claims.
- e) She carefully researched and planned the move to Canada. She booked a flight from Washington D.C. and then arranged a shuttle to come to the border at Roxham Road. She knew exactly where to present herself and the child between the points of entry. She deceived the father about where she was going and turned off her phones so that he could not communicate with her or prevent the move.
- f) She insisted that the BSO told the father that she was at the border seeking asylum for herself and the child. This was expressly contradicted by the BSO, who said that she did not do that. The BSO said that she is prohibited by law from disclosing the reason someone is at the border. She said that she only asked the father whether or not he consented to the child's entry into Canada. The BSO was much more credible than the mother.
- g) She assured the father that he would be able to see the child. However, she refused to provide him with her address. The father had no video calls with the child. The mother claimed that the video on her phone was broken. The court doubts this. Then,

after June 3, 2022, she cut off all contact with the father and attempted to prevent him from finding her and the child. He had to hire a private investigator to locate them. She has frustrated the child from having a relationship with the father since she came to Canada.

h) Three days after the Texas court ruled in favour of the father on the temporary parenting issues, the mother issued a claim in Ontario seeking the identical relief that had just been determined. She said that she did not appeal the Texas court decision because she had been told that her chances were not good. Instead, she chose a different jurisdiction to litigate the same issues.

i) The mother failed to advise this court in her application and Form 35.1 affidavit about the Texas court case or of the temporary orders made by that court.

j) The mother's rationalizations for not disclosing this information were informative of her willingness to say or do anything to justify her actions. She gave the following reasons for not disclosing this information:

i. She was self-represented.

ii. Her previous lawyer told her not to disclose this. The court does not believe this.

iii. She had only received the oral decision of the Texas court and not the formal court order.

iv. She didn't intend to pursue her application, so it was unnecessary to provide this information to the court. She hoped that she could settle the case with the father.

v. The First Appearance court date was not until January 4, 2023 and she had up until then to disclose this information – she fully intended to do if the matter continued in court.

k) She let her Nigerian passport expire in September 2022, creating a barrier to her re-entering the United States.

l) She said that she did not follow the Texas court order because she does not accept it. She said that she is the decision-maker for the child and she should decide where the child lives and when the child should see the father. She said that she would follow this court's order because "the Hague court is a higher court and has heard all the evidence".

m) She did not provide the in-person parenting time ordered by Justice Zisman on December 12, 2022.

n) At trial, she claimed she would have told the father of her intention to enter Canada if her phones were on. She stated that “I knew that I needed his consent and he would be called”. This was contrary to any prior statement she had made in this case or to the Texas court.

o) At trial, she was very clear that she came to Canada with the child to permanently live in Canada. She only planned to travel in the United States once her immigration status was settled in Canada. However, she told the Texas court at the hearing on October 10, 2022 that her goal was to return to the United States – she just wanted to handle her immigration status first.

[...]

[Footnotes omitted.]

[18] The OCJ determined that:

- A. The son was wrongfully removed from the United States by the Applicant.
- B. In the alternative, the son was wrongly retained in Canada.
- C. The son’s habitual residence was in Texas.
- D. Mr. Ogunboye had custody rights and was exercising those rights when the son was wrongfully removed or retained from his habitual residence.
- E. Mr. Ogunboye’s consent to the son remaining in Canada was given under false pretenses and based on deceit and material misrepresentations made to him by the Applicant and was also obtained through duress. As such, his consent was not valid and informed consent.

F. The son would not face grave risk of being exposed to physical or psychological harm or be placed in an intolerable position if returned to the United States.

[19] The OCJ ordered that the son was to be immediately returned to Texas to the care of his father and affirmed the terms of the Texas Order as it relates to parenting time.

[20] Mr. Ogunboye took custody of the son on January 31, 2023.

[21] The Applicant claims that, in breach of the Texas Order, Mr. Ogunboye failed to bring their son to Canada every third weekend of every month for four consecutive months. As a result, the Applicant filed a contempt motion before the OCJ, which resulted in an order compelling Mr. Ogunboye to surrender the son to the Applicant for a total of 62 days, to make up for the lost time, after which the original schedule pursuant to the Texas Order would resume. The Applicant claims that Mr. Ogunboye did not return to pick up their son upon the completion of the 62-day visitation. Rather, in January 2023, Mr. Ogunboye sent the son's belongings to Canada.

[22] The Applicant claims that Mr. Ogunboye did not return to Canada to visit his son until January 2024, at which time he decided that it would be best to leave his son in the Applicant's sole care in Canada. He consequently provided a consent letter in February 2024, agreeing to let the child live with the Applicant.

[23] The RPD heard the Applicant's refugee claim on March 5, 2024. In its decision dated October 2, 2024, the RPD found that the Applicant should be excluded from refugee protection under Article 1F(b) of the *Refugee Convention*. The RPD found that the determinative issues in the claim were the prospective risk of return to the United States, exclusion under Article 1F(b) and the Applicant's credibility within the exclusion analysis. The RPD focused on the crime of child abduction under the *Criminal Code*, RSC 1985, c C-46. Subsection 283(1) of the *Criminal Code* establishes the elements of the crime of child abduction and provides as follows:

Abduction

283 (1) Everyone who, being the parent, guardian or person having the lawful care or charge of a child under the age of 14 years, takes, entices away, conceals, detains, receives or harbours that child, whether or not there is an order referred to in subsection 282(1) in respect of the child, with intent to deprive a parent, guardian or any other person who has the lawful care or charge of that child, of the possession of that child, is guilty of

(a) an indictable offence and is liable to imprisonment for a term not exceeding ten years; or

(b) an offence punishable on summary conviction.

Enlèvement

283 (1) Quiconque, étant le père, la mère, le tuteur ou une personne ayant la garde ou la charge légale d'un enfant âgé de moins de quatorze ans, enlève, entraîne, retient, reçoit, cache ou héberge cet enfant, qu'il y ait ou non une ordonnance visée au paragraphe 282(1) à l'égard de cet enfant, dans l'intention de priver de la possession de celui-ci le père, la mère, le tuteur ou la personne en ayant la garde ou la charge légale, est coupable :

a) soit d'un acte criminel passible d'un emprisonnement maximal de dix ans;

b) soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

[24] The Applicant appealed the RPD's determination to the RAD.

II. Decision under Review

[25] By decision dated February 11, 2025, the RAD dismissed the Applicant's appeal and concluded that: (a) there were serious reasons for considering that the Applicant committed the crime of child abduction when she took her son to Canada without the father's consent; and (b) the offence was a serious non-political crime under Article 1F(b) of the *Refugee Convention* thus resulting the Applicant's exclusion from refugee protection.

[26] With respect to the Applicant's credibility, the RAD found that the Applicant's story about taking her son was not credible. The Applicant had argued that the RPD did not properly consider her evidence that she is an extremely desperate and vulnerable person fearing deportation to Nigeria and that she could not be expected to leave her American son in the United States because his father only saw him on weekends and has children with another woman. Moreover, the Applicant had asserted that the RPD did not consider her evidence and circumstances surrounding her abusive relationship with a man in Nigeria and sexual assault at the hands of Mr. Ogunboye. However, the RAD rejected these arguments and agreed with the RPD that the sexual assault by Mr. Ogunboye was not relevant to the Applicant's credibility as it relates to why she took her son to Canada, particularly because she did not come to Canada to flee Mr. Ogunboye or the abusive relationship in Nigeria.

[27] The RAD found that the RPD was correct to give the OCJ decision significant weight, noting that, while the decision was not binding on the RPD nor the RAD, it made many credibility findings after hearing evidence from both parties that were relevant to establishing the

crime of child abduction. Having reviewed the evidence before the OCJ, the RAD agreed with the OCJ's determinations regarding the Applicant's lack of credibility.

[28] With respect to the crime of child abduction, the RAD determined that the elements of the crime of child abduction under subsection 283(1) of the *Criminal Code* were established, given that the Applicant is her son's parent, her son was under the age of 14 at the time and the Applicant took her son with the intent to deprive his father of his custody rights. To establish the last factor, the RAD noted that the OCJ decision was important because the Applicant admitted in that proceeding that Mr. Ogunboye would not have provided his consent to the son's travel if she had been forthright of her intention to claim refugee protection in Canada. Further, the RAD found that the RPD correctly determined the Applicant did not have a defence to the crime of child abduction, as: (a) Mr. Ogunboye's consent was given under duress; and (b) the Applicant had not established the defence of imminent harm since the temporal element of the defence had not been made out and other legal avenues were readily available.

[29] As to whether the crime was serious, the RAD found that child abduction is presumed to be a serious crime as it is punishable by 10 years of imprisonment. As the presumption of seriousness is rebuttable, the RAD went on to consider various additional factors. Specifically:

- A. The RAD noted that, in Canada, child abduction is a hybrid offence with no mandatory minimum sentence.
- B. The RAD agreed with the RPD that there were a number of mitigating factors that reduced the seriousness of the crime, including that the Applicant was never

charged or convicted of the crime, has no criminal history, the abduction was not violent and the abduction did not lead to lasting financial harm.

- C. The RAD agreed with the RPD that there were a number of aggravating factors that increased the seriousness of the crime, including that the Applicant removed her son to another country and her dishonesty in bringing her son to Canada and in obtaining invalid consent from the son's father (under duress and without disclosing her true intentions).
- D. The RAD agreed with the RPD's assessment that her crime would fall in the middle of the sentencing range because she crossed an international border without valid consent of the son's father, the length of time the father was denied access to his son and the evidence regarding the Applicant's deception in bringing her son to Canada with the intention of staying in Canada permanently.
- E. The RAD found that the RPD was correct in finding that the events that occurred after the Applicant travelled with her son to Canada are not relevant to an Article 1F(b) determination.

[30] Weighing all of the factors, the RAD concluded that the offence was a serious non-political crime under Article 1F(b) and that there were serious reasons for considering that the Applicant committed a serious non-political crime, such that she is excluded from refugee protection.

III. Issue and Standard of Review

[31] The sole issue before the Court is whether the RAD's decision was reasonable.

[32] The parties agree, and I concur, that the applicable standard of review is reasonableness. When reviewing for reasonableness, the Court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified. 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 [see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 15, 85]. The Court will intervene only if it is satisfied there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency [see *Adeniji-Adele v Canada (Citizenship and Immigration)*, 2020 FC 418 at para 11].

IV. Analysis

A. The RAD did not err in its credibility assessment

[33] The Applicant asserts that the RAD erred by relying solely on the OCJ decision in impugning the Applicant's credibility and ignoring the Applicant's evidence in her Basis of Claim narrative and testimony that she was in a desperate and vulnerable situation. Specifically, that she feared persecution in Nigeria as a bisexual woman, that she was a victim of sexual assault by Mr. Ogunboye and thus could not trust him to disclose her intentions of making a

refugee claim, and that she feared deportation from the United States due to threats from Mr. Ogunboye's girlfriend. She had also agreed with Mr. Ogunboye that, for the purpose of the OCJ proceeding, they would not mention the sexual assault so that the son would never find out. The Applicant states that the RAD misapplied the Immigration and Refugee Board's "Chairperson's Guideline 4: Gender Considerations in Proceedings Before the Immigration and Refugee Board" [Gender Guidelines] by unreasonably concluding that her allegations of sexual assault did not impact the credibility of her allegations as to why she came to Canada.

[34] It must be recalled that credibility determinations are part of the fact-finding process and are afforded significant deference upon review [see *Fageir v Canada (Citizenship and Immigration)*, 2021 FC 966 at para 29; *Tran v Canada (Citizenship and Immigration)*, 2021 FC 721 at para 35; *Azenabor v Canada (Citizenship and Immigration)*, 2020 FC 1160 at para 6]. Such determinations by the RAD should only be overturned "in the clearest of cases", where the determination is perverse, capricious or made without regard to the evidence [see *Liang v Canada (Citizenship and Immigration)*, 2020 FC 720 at para 12; *Tran, supra* at para 35; *Yan v Canada (Citizenship and Immigration)*, 2017 FC 146 at para 18].

[35] I am not satisfied that the Applicant has demonstrated that the RAD's credibility determination warrants this Court's intervention. It was certainly open to the RAD to consider and give weight to the OCJ's credibility findings [see *Dedvukaj v Canada (Citizenship and Immigration)*, 2024 FC 1300 at para 161; *Pascal v Canada (Citizenship and Immigration)*, 2020 FC 751 at para 67; *Kovacs v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1473 at para 10]. However, contrary to the Applicant's assertion, the RAD did not base its credibility

determination solely on those findings. Rather, as is clear from its reasons, the RAD considered the Applicant's evidence as to why she fled the United States, considered the Applicant's explanation as to why she did not disclose the sexual assault in the OCJ proceeding and applied the Gender Guidelines in its independent assessment. The RAD provided a detailed and well-reasoned explanation for its credibility determination, including why it was placing weight on the OCJ proceeding.

B. The RAD did not err in finding that the Applicant is excluded from refugee protection under Article 1(F)(b)

[36] Subsection 107(1) of the *IRPA* requires the RPD and the RAD to accept a claim for refugee protection “if it determines that the claimant is a Convention refugee or person in need of protection”. Otherwise, the claim shall be rejected. A Convention refugee is defined at section 96 of the *IRPA* and a person in need of protection is defined at section 97 of the *IRPA*.

[37] However, the *IRPA* explicitly identifies certain classes of persons who are excluded from these definitions. Section 98 of the *IRPA* states that a person referred to in Article 1E or Article 1F of the *Refugee Convention* is not a Convention refugee or a person in need of protection. With this provision, Parliament incorporated the exclusion clauses of the *Refugee Convention* and, at the refugee status determination stage, specifically extended the exclusion clauses to a “person in need of protection” as defined in section 97 of the *IRPA*. The relevant exclusion clause in the case at bar is Article 1F(b) of the *Refugee Convention*, which reads as follows:

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for

F. Les dispositions de cette Convention ne seront pas applicables aux personnes dont on aura des raisons sérieuses de

considering that:

[...]

(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

[...]

penser :

[...]

b) qu'elles ont commis un crime grave de droit commun en dehors du pays d'accueil avant d'y être admises comme réfugiés;

[...]

[38] The Federal Court of Appeal has confirmed that, for an Article 1F(b) exclusion to apply, the Minister merely has to show, on a burden less than the civil standard of balance of probabilities, that there are serious reasons to consider that the applicant committed the alleged acts. The Minister is not required to prove an applicant's guilt [see *Zrig v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 178 at para 56]. Moreover, for Article 1F(b) to apply, an applicant need not have been charged or convicted of the criminal offence at issue [see *Zrig, supra* at para 129; *Febles v Canada (Citizenship and Immigration)*, 2014 SCC 68 at paras 35, 60].

[39] As to what constitutes a “serious” crime, the Supreme Court of Canada in *Febles* instructs at paragraph 62:

[62] The Federal Court of Appeal in *Chan v. Canada (Minister of Citizenship and Immigration)*, [2000] 4 F.C. 390 (C.A.), and *Jayasekara* has taken the view that where a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada, the crime will generally be considered serious. I agree. However, this generalization should not be understood as a rigid presumption that is impossible to rebut. Where a provision of the Canadian *Criminal Code*, R.S.C. 1985, c. C-46, has a large sentencing range, the upper end being ten years or more and the lower end being quite low, a claimant whose crime

would fall at the less serious end of the range in Canada should not be presumptively excluded. Article 1F(b) is designed to exclude only those whose crimes are serious. The UNHCR has suggested that a presumption of serious crime might be raised by evidence of commission of any of the following offences: homicide, rape, child molesting, wounding, arson, drugs trafficking, and armed robbery (Goodwin-Gill, at p. 179). These are good examples of crimes that are sufficiently serious to presumptively warrant exclusion from refugee protection. However, as indicated, the presumption may be rebutted in a particular case. While consideration of whether a maximum sentence of ten years or more could have been imposed had the crime been committed in Canada is a useful guideline, and crimes attracting a maximum sentence of ten years or more in Canada will generally be sufficiently serious to warrant exclusion, the ten-year rule should not be applied in a mechanistic, decontextualized, or unjust manner.

[Emphasis added.]

[40] Accordingly, a non-political crime is presumptively serious where a maximum sentence of ten years or more could have been imposed had the act been committed in Canada. However, this presumption is rebuttable. When assessing the seriousness of an offence, the RPD and the RAD must consider the elements of the offence, the mode of prosecution, the penalty prescribed, the facts of the offence and the mitigating and aggravating circumstances underlying the conviction [see *Jayasekara v Canada (Citizenship and Immigration)*, 2008 FCA 404 at para 44].

[41] The Applicant asserts that the RAD made a number of errors in determining that the Applicant's conduct amounted to the commission of a serious crime. First, the Applicant asserts that the RAD erred by failing to consider her son's father's conduct after the OCJ decision and that the Applicant now has full custody of her son. The current picture, she asserts, does not demonstrate a child forcibly taken from the father and a father whose parental rights have been irrevocably severed as a result of her actions. I find that there is no merit to this assertion. The

RAD correctly determined that the events that occurred after the Applicant travelled with her son to Canada without consent are irrelevant to the exclusion decision under Article 1F(b), as an assessment of the seriousness of the crime does not include post-offence considerations [see *Febles, supra* at para 33].

[42] Second, the Applicant asserts that the RAD erred in finding that the offence was serious as the Applicant was never charged, yet alone convicted, and she has never accepted the veracity of the allegation that she abducted her son. Again, these arguments lack merit, as the case law is clear that the Applicant need not have been charged or convicted of the criminal offence at issue. Whether or not the Applicant herself “accepts” the veracity of the allegation is entirely irrelevant.

[43] Third, the Applicant asserts that the RAD improperly assessed the seriousness of the crime in a rigid manner and then failed to provide sufficient reasons for its determination that the offence was serious, given that no actual crime was committed and no victim exists. Again, I find that there is no merit to these assertions. The RAD properly considered that the presumption of seriousness could be rebutted and considered the relevant *Jayasekara* factors, including those that mitigated the seriousness of the offence. The RAD’s analysis was not rigid and its findings were justified and in accordance with the applicable legal principles. While the Applicant may be of the view that her conduct was “victimless”, the RAD reasonably found that was not the case as both the son and the father were victimized by her conduct.

[44] Fourth, the Applicant asserts that the RAD erred by basing its decision that the offence was serious predominantly on the maximum possible sentence length, when it was required to consider whether such a penalty would be imposed on the Applicant in all of the circumstances. I find that the RAD made no such error. As detailed above, the RAD properly noted the presumption of seriousness based on the maximum sentence of 10 years for this offence and then went on to consider the various *Jayasekara* factors, including the possible sentencing range. Contrary to the Applicants assertion, the RAD determined that the Applicant's case would have fallen in the middle of the sentencing range. However, when all of the factors were weighed together, the RAD reasonably determined that the Applicant's offence was serious.

[45] Accordingly, I am not satisfied that the Applicant has demonstrated any basis for the Court's intervention in relation to the RAD's Article 1F(b) exclusion finding.

[46] As the Applicant has failed to demonstrate that the RAD's decision was unreasonable, the application for judicial review shall be dismissed.

[47] Neither party raised a question for certification and I agree that none arises.

JUDGMENT in IMM-5012-25

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.
2. There is no question for certification.

“Mandy Ayles”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5012-25

STYLE OF CAUSE: OYEYEMI MOYINOLUWA FAOYE v THE MINISTER
OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: FEBRUARY 10, 2026

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