

CANADA / JUDGMENT

# Oke v. Canada (Citizenship and Immigration)

2025 FC 899

COURT

Federal Court

DECIDED

16 May 2025

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Oke v. Canada (Citizenship and Immigration) Court (s) Database Federal Court Decisions Date 2025-05-16 Neutral citation 2025 FC 899 File numbers IMM-4389-24 Decision Content Date: 20250516 Docket : IMM-4389-24 Citation: 2025 FC 899 Ottawa, Ontario , May 16, 2025 PRESENT: Madam Justice McDonald BETWEEN: Ayoola OKE Applicant and THE MINISTER OF CITIZENSHIP AND IMMIGRATION Respondent JUDGMENT AND REASONS

- [1] The Applicant, Ayoola Oke, seeks review of a decision of the Refugee Appeal Division (RAD) dismissing his appeal. The RAD upheld the Refugee Protection Division (RPD) finding that Mr. Oke was not a convention refugee as he did not demonstrate a serious possibility of persecution in Nigeria. The RAD concluded that the evidence failed to establish, on a balance of probabilities, that the Applicant would be persecuted or harmed in Nigeria because of his political support for the Yoruba Nation separatist group [Yoruba Nation].
- [2] Mr. Oke is a citizen of Nigeria and a permanent resident of South Africa. He claims to fear persecution in South Africa because of his Nigerian citizenship, and in Nigeria because of his political support of the Yoruba Nation.
- [3] Mr. Oke and his family left South Africa for Canada in 2022 and applied for refugee protection. The RPD accepted the claims of his wife and children but rejected Mr. Oke's claim that he would face persecution in Nigeria.
- [4] On February 13, 2024, the RAD rejected his appeal.
- [5] The parties agree that the applicable standard of review of the RAD decision is reasonableness. 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 (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 86 [Vavilov]). A reviewing Court will not interfere with the factual findings of the decision maker absent exceptional circumstances and must refrain from reweighing and reassessing the evidence considered by the decision maker (Vavilov at para 125).

- [6] The Applicant raises the following issues with the RAD decision: Refusal to accept new evidence. Political opinion under section 96 of the Immigration and Refugee Protection Act, SC 2001, c 27 [IRPA]. Risk of persecution as a member of a social group. Did the RAD consider section 97 risk of persecution? I. Analysis A. Refusal to accept new evidence. [7] Mr. Oke argues that the RAD unreasonably refused to admit his text messages as new evidence under subsection 110(4) of the IRPA. He argues that the rules of evidence should have been applied in a more relaxed manner because he was self-represented.
- [8] Subsection 110(4) of the IRPA states: Evidence that may be presented
- (4) On appeal, the person who is the subject of the appeal may present only evidence that arose after the rejection of their claim or that was not reasonably available, or that the person could not reasonably have been expected in the circumstances to have presented, at the time of the rejection Éléments de preuve admissibles
- (4) Dans le cadre de l'appel, la personne en cause ne peut présenter que des éléments de preuve survenus depuis le rejet de sa demande ou qui n'étaient alors pas normalement accessibles ou, s'ils l'étaient, qu'elle n'aurait pas normalement présentés, dans les circonstances, au moment du rejet.
- [9] With respect to the text messages, the RAD found as follows:
- [11] The text message from 2013 could have been provided to the RPD. The Appellant acknowledges that it is not new, but it did not cross his mind to provide it until now. The Federal Court has determined that the test for admissibility of new evidence leaves no room for discretion and must be interpreted narrowly, or it departs from the general principle that the Refugee Appeal Division (RAD) proceeds without a hearing based on the record before the RPD. [Footnotes omitted.]
- [10] Despite his submission that the rules should have been relaxed, those who choose to represent themselves remain responsible for understanding and following the relevant rules and procedures. While navigating the process may be challenging for self-represented litigants, I do note that Mr. Oke did represent himself before the RPD, so he was not a complete stranger to the process.
- [11] In any event, subsection 110(4) of the IRPA is to be narrowly interpreted, which means there is little discretion for the RAD to relax the rules of evidence (Canada (Citizenship and Immigration) v Singh, 2016 FCA 96 at para 35).
- [12] The RAD finding that the text messages did not meet the requirements of subsection 110(4) is reasonable. B. Political opinion under section 96 of the IRPA. [13] The Applicant argues that the RAD did not do a proper section 96 risk assessment when it compared his risk to the risk faced by members of other separatist organizations. This approach was taken by the RAD because of the limited documentation on the Yoruba Nation.

- [14] Section 96 of the IRPA states: Convention refugee 96 A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,
- (a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail themselves of the protection of each of those countries; or
  - (b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country. Définition de réfugié 96 A qualité de réfugié au sens de la Convention — le réfugié — la personne qui, craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un groupe social ou de ses opinions politiques :
    - a) soit se trouve hors de tout pays dont elle a la nationalité et ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de chacun de ces pays;
    - b) soit, si elle n'a pas de nationalité et se trouve hors du pays dans lequel elle avait sa résidence habituelle, ne peut ni, du fait de cette crainte, ne veut y retourner.
- [15] In considering the risk to Mr. Oke, the RAD noted that he was a low-level supporter of the Yoruba Nation, therefore he did not face a serious possibility of persecution in Nigeria. This finding was grounded on the information in the National Documentation Package (NDP) evidence. Mr. Oke argues that the RAD improperly focused on the absence of information in the NDP regarding Yoruba persecution and failed to give significant weight to the two articles he provided as new evidence.
- [16] The RAD considered the evidence before them, including the Applicant's articles. After reviewing the evidence, the RAD found that while the Applicant expressed a subjective fear of persecution, he did not provide sufficient evidence to support an objective fear of persecution. Accordingly, I do not agree with Mr. Oke's assertion that the RAD did not consider the news articles. Rather the RAD considered and weighed the evidence made up of the news articles and the NDP evidence.
- [17] Mr. Oke's submissions amount to a disagreement with how the RAD weighed the evidence. The role of this Court is not to re-weigh the evidence, and the Applicant has not identified any errors with the RAD's handling of evidence. C. Risk of persecution as a member of a social group. [18] Mr. Oke argues that the RAD failed to consider his risk based on his membership in the Yoruba minority ethnic group.
- [19] The Respondent objects to the Court considering this submission because Mr. Oke did not argue "risk" on this ground before the RAD. The law is clear that the RAD is not required to provide reasons for unchallenged findings (*Akintola v Canada* (Citizenship and Immigration), 2020 FC 971 at para 21). In other words, since Mr. Oke did not argue this as a ground before the RAD, it cannot be permitted to do so on this judicial review.

- [20] I agree with the Respondent that the Applicant did not raise this issue directly. In any event, I am satisfied that the Applicant's ethnicity was considered in keeping with his Basis of Claim narrative where his risk was related to his involvement with the Yoruba Nation and not based upon his Yoruba ethnicity. D. Did the RAD consider section 97 risk of persecution?
- [21] The Applicant argues that the RAD erred by failing to conduct a full analysis of his risks pursuant to section 97 which states: Person in need of protection 97 (1) A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence, would subject them personally
- (a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or
  - (b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if
    - (i) the person is unable or, because of that risk, unwilling to avail themselves of the protection of that country, (ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country, (iii) the risk is not inherent or incidental to lawful sanctions, unless imposed in disregard of accepted international standards, and (iv) the risk is not caused by the inability of that country to provide adequate health or medical care. Personne à protéger 97 (1) A qualité de personne à protéger la personne qui se trouve au Canada et serait personnellement, par son renvoi vers tout pays dont elle a la nationalité ou, si elle n'a pas de nationalité, dans lequel elle avait sa résidence habituelle, exposée :
  - a) soit au risque, s'il y a des motifs sérieux de le croire, d'être soumise à la torture au sens de l'article premier de la Convention contre la torture;
  - b) soit à une menace à sa vie ou au risque de traitements ou peines cruels et inusités dans le cas suivant :
    - (i) elle ne peut ou, de ce fait, ne veut se réclamer de la protection de ce pays, (ii) elle y est exposée en tout lieu de ce pays alors que d'autres personnes originaires de ce pays ou qui s'y trouvent ne le sont généralement pas, (iii) la menace ou le risque ne résulte pas de sanctions légitimes — sauf celles infligées au mépris des normes internationales — et inhérents à celles-ci ou occasionnés par elles, (iv) la menace ou le risque ne résulte pas de l'incapacité du pays de fournir des soins médicaux ou de santé adéquats.
- [22] He submits that his activities with Yoruba Nation, including the possibility he may have been seen on television, could put him at risk of persecution.
- [23] The challenge for Mr. Oke with this submission is that where an applicant does not establish persecution under section 96, it is not necessary for the RAD to conduct a separate section 97 analysis (*Racz v Canada (Citizenship and Immigration)*, 2012 FC 436 at para 6).

- [24] In any event, here the RAD did turn its mind to risk under section 97 when it found that country conditions evidence alone was insufficient to support a claim for risk when there is a lack of evidence of a personalized risk. Additionally, the RAD finding cannot be faulted with the Applicant's failure to provide any evidence of risk of persecution under section 97.
- [25] I find no error in the RAD's reasoning. II. Conclusion [26] Overall, the RAD's decision is reasonable. This judicial review application is dismissed and there is no question for certification. JUDGMENT IN IMM-4389-24 THIS COURT'S JUDGMENT is that : This judicial review is dismissed. There is no question for certification. blank "Ann Marie McDonald" blank Judge FEDERAL COURT SOLICITORS OF RECORD Docket : IMM-4389-24 STYLE OF CAUSE: OKE v mci PLACE OF HEARING : Toronto, Ontario DATE OF HEARING: february 19, 2025 JUDGMENT AND REASONS: McDonald J. DATED: May 16, 2025 APPEARANCES : David Tobis FOR THE APPLICANT Idorenyin Udoh-Orok FOR THE RESPONDENT SOLICITORS OF RECORD: Lewis & Associates LLP Toronto, Ontario FOR THE APPLICANT Attorney General of Canada Toronto, Ontario FOR THE RESPONDENT

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