Federal Court  Cour fédérale

Date: 20170518

Docket: IMM-4785-16

Citation: 2017 FC 510

Ottawa, Ontario, May 18, 2017

PRESENT: The Honourable Mr. Justice Manson

BETWEEN:

SIDIKATU ABIKE ADEDOKUN
RUKAYAT FOLASHADE SURAJUDEEN
ZAINAB OLUWASEUN SURAJUDEEN
YUSRAH ABIODUN SURAJUDEEN

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Introduction

[1] This is an application for judicial review under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 ("*IRPA*" or the "Act") of a decision of the Refugee Appeal Division (the "RAD"), wherein the RAD dismissed the Applicants' appeal and affirmed

the decision of the Refugee Protection Division (the "RPD"), and determined that the Applicants are neither Convention refugees nor persons in need of protection (the "Decision").

II. Background

[2] The Applicants, Sidikatu Abike Adedokun (the "Principal Applicant"), Rukayat Folashade Surajudeen, Zainab Oluwaseun Surajudeen, and Yusrah Abiodun Surajudeen (collectively, the "Applicants") are citizens of Nigeria. They are claiming refugee protection in Canada pursuant to sections 96 and 97(1) of the *IRPA*.

[3] The Applicants fear domestic violence, forced marriage, and female genital mutilation ("FGM") at the hands of the Principal Applicant's husband's (the "Husband") family. The Principal Applicant alleges that the Husband's father (the "Father-In-Law") and kinsmen plan to force her eldest daughter, Rukayat, into marriage and to undergo FGM.

[4] The Principal Applicant claims that sometime in May 2015, the Father-In-Law informed her and the Husband that he had arranged for Rukayat to be married to the son of the local Imam, who is approximately 40 years old and who already has two wives. The marriage and FGM were supposed to take place in October 2015, after Rukayat turned 12 years old. The Husband went to the Father-In-Law in an attempt to change his mind, but the Father-In-Law would not relent.

[5] The Applicants had travelled to the United States, in the spring of 2015, and still had valid United States visas, which they used to flee Nigeria. From the United States, they came to Canada, as they had been advised that Canada had a better record of protecting abused women.

The Husband remained in Nigeria; however, he too has fled the family home, in Lagos, and is in hiding because the Father-In-Law and his kinsmen believe that he assisted the Applicants in their escape.

[6] According to the Principal Applicant, it is not safe for the Applicants to return to Nigeria because the Father-In-Law and his family want to harm the Applicants. The Principle Applicant alleges that the Father-In-Law is a rich man, who owns a Transportation Company, with connections in mosques all over Nigeria. She claims to fear for her personal life and safety, and the safety of her children; and alleges that the Father-In-Law would harm her for disobeying his orders and preventing Rukayat's marriage to the Imam's son, Yusuf.

[7] In rejecting the Applicants' claim for refugee protection, the RPD found that the determinative issue was that the Applicants had an internal flight alternative ("IFA"). The RPD held that, on a balance of probabilities, the Applicants do not face a serious possibility that they would be persecuted in Nigeria if they relocated to Abuja, Benin City, Ibadan, or Port Harcourt (the "IFA Cities"). The RPD further determined that it would not be unreasonable for the Applicants to seek refuge in any of those cities.

[8] On appeal, the RAD confirmed the RPD's decision. The RAD considered a request to grant the Applicants an oral hearing and determined that, because the Applicants had not submitted any new evidence for the appeal, the RAD could not hold an oral hearing.

[9] The RAD also found that the RPD had not committed an error in failing to consider the *Chairperson's Guidelines for Women Refugee Claimants Fearing Gender-Related Persecution* (the "Gender Guidelines"), and noted that the RPD had recognized that both the Gender Guidelines and Guideline 3: *Child Refugee Claimants: Procedural and Evidentiary Issues* could be applicable to this claim. Further, the RAD held that the RPD had applied the correct test for determining whether an IFA exists: the two-prong test emanating from *Rasaratnam v Canada (Minister of Employment and Immigration)*, [1991] FCJ No 1256 (CA) [*Rasaratnam*], and *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172 (CA) [*Thirunavukkarasu*], where the burden is upon the Applicants to show that they do not have an IFA.

[10] The RAD concluded that there was no evidence to demonstrate that the Father-In-Law had the resources or connections to locate the Applicants in any of the IFA Cities. The RAD also stated that the Applicants failed to provide a reasonable explanation as to why they believed that they would be discovered and/or harmed in any of the IFA Cities. The RAD, therefore, found that the Applicants could live in any of the IFA Cities without fear or the need to hide.

[11] Further, the RAD was not persuaded that it would unreasonable for the Applicants to relocate to any of the IFA Cities. The RAD held that the Applicants would not suffer any harm in those cities on account of their religious beliefs, and that the Principal Applicant would be able to obtain employment.

III. Issue

[12] The issue is whether the RAD's decision that the Applicants have an IFA is reasonable.

IV. Standard of Review

[13] The appropriate standard of review is reasonableness (*Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93 at paras 30 to 35 [*Huruglica*]).

[14] In determining whether the Decision is reasonable, the Court must consider the decision contextually, in its entirety, and not embark upon a line-by-line analysis (*Communications, Energy and Paperworks Union of Canada, Loca 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 at para 54). However, the Court can intervene if the decision-maker has overlooked material evidence or has taken evidence into account that is inaccurate or not material (*James v Canada (Attorney General)*, 2015 FC 965 at para 86).

V. Analysis

A. *Was the RAD's decision that the Applicants have an IFA reasonable?*

[15] The two-prong analysis for IFA derived from *Rasaratnam* and *Thirunavukkarasu*, above, was recently restated by this Court in *Sargsyan v Canada (Minister of Citizenship and Immigration)*, 2015 FC 333 at paragraph 12:

> 1. The RPD must be satisfied, on a balance of probabilities, that there is no serious possibility of the Applicant being persecuted in the part of the country in which it finds an IFA exist; and

> 2. That the conditions in that part of the country are such that it would not be unreasonable for the Applicant to seek refuge there.
>
> [citations omitted]

[16] In an application for judicial review, the Applicants bear the burden of showing where the RAD committed a reviewable error and establishing their claim.

[17] The Applicants argue that it is unreasonable for the RAD to have concluded, based solely on the distance of the IFA Cities from Lagos and their size, that the Applicants can relocate to any of these cities without risk.

[18] In the Decision, the RAD considered the evidence of the Father-In-Law's attempts to locate the Applicants and assessed whether he had political or business resources at his disposal, which he could use to search out the Applicants, before determining that there was no persuasive evidence that the Father-In-Law or his kinsmen could persecute the Applicants in any of the IFA Cities. As such, I disagree with the Applicants that the RAD's analysis of whether the Applicants face a serious possibility of being persecuted in any of the IFA Cities was based solely on the distance of the IFA Cities from Lagos and the size of each city.

[19] The Applicants also assert that the RAD ignored gender issues and failed to consider the Gender Guidelines, and state that this impacted the RAD's determination that it would not be unreasonable for the Applicants to seek refuge in one of the IFA Cities. The Respondent asserts that the RAD did not provide lengthy reasons on the issue of the Principal Applicant's gender or on her marital status—relying on the reasons of the RPD, which were referenced in the

Decision—because the Applicants focused on the issue of their ability to practice their religion before the RAD.

[20] The Applicants provided little evidence regarding how the conditions in the IFA Cities would impact the Applicants based upon the Principal Applicant's gender and marital status. Further, they did not adduce any evidence to displace the RPD's finding that the Husband would be able to reunite with the Applicants, in Nigeria. Therefore, I find that the RAD's consideration of the Principal Applicant's gender and the Gender Guidelines is reasonable.

[21] Further, the Applicants state that the Decision was unreasonable because there was no state protection analysis. However, the availability of state protection in Nigeria was not an issue that was raised at either the RPD or the RAD, and it was not a determinative factor for either panel.

[22] Finally, although the Applicants state in their written submissions that neither the RAD nor the RPD made findings regarding the Principal Applicant's credibility, they have not demonstrated why the RAD's failing to make a credibility finding is unreasonable. The Respondent contends that the RAD's conclusion was based upon the insufficiency of the evidence in the record and that the RAD did not need to make a credibility finding, in order to find that there was an IFA.

[23] Based upon the arguments and the record before the Court, I find that the RAD's conclusion that there was insufficient evidence, to show that the Applicants did not have an IFA, is reasonable.

JUDGMENT in IMM-4785-16

THIS COURT'S JUDGMENT is that:

1. The Application is dismissed.

2. There is no question for certification.

"Michael D. Manson"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

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