Federal Court  Cour fédérale

Date: 20180518

Docket: IMM-4333-17

Citation: 2018 FC 528

Ottawa, Ontario, May 18, 2018

PRESENT: The Honourable Mr. Justice Boswell

BETWEEN:

IYOBOSA ALADENIKA,
ELIZABETH ALADENIKA (a minor),
GODWIN ALADENIKA (a minor)

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

[1] Iyobosa Joy Aladenika is a 44 year old citizen of Nigeria who arrived in Canada on August 14, 2013. Ms. Aladenika and her two children, Elizabeth Tiwat Aladenika, now age 15, and Godwin Olumuyiw Aladenika, now age 10, claimed refugee protection due to persecution by her husband's family in Nigeria to force her daughter to undergo female genital mutilation [FGM]. The Refugee Protection Division [RPD] of the Immigration and Refugee Board [IRB]

rejected their refugee claim in a decision dated February 19, 2014, on the basis that a viable internal flight alternative [IFA] was available in either Benin City or Lagos. The Refugee Appeal Division [RAD] of the IRB confirmed the RPD's decision on July 4, 2014.

[2] After the RAD dismissed the Applicants' appeal of the RPD decision, they then applied for a pre-removal risk assessment [PRRA] which was refused on October 31, 2016. This negative PRRA determination was set aside though, and the matter remitted back to a different officer for redetermination since the officer had made a factual error with respect to one of the affidavits submitted by the Applicants (see: *Aladenika v Canada (Citizenship and Immigration)*, 2017 FC 565, 282 ACWS (3d) 385). Upon redetermination, a Senior Immigration Officer again refused the Applicants' PRRA application in a decision dated August 30, 2017, finding that there was still an IFA available to them in Benin City. The Applicants have now applied under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c-27 [*IRPA*], for judicial review of the Officer's decision. They ask the Court to set aside the Officer's decision and have their PRRA application reconsidered by a different officer.

I. The Officer's Decision

[3] The Officer who redetermined the Applicants' PRRA application found, on a balance of probabilities, that there was still a viable IFA in Benin City. In reaching this determination, the Officer considered the written submissions of the Applicants' counsel as well as other documentation; specifically, affidavits from Ms. Aladenika, her father, her half-sister, and her husband's cousin; a psychological assessment of Ms. Aladenika by Dr. Patricia Keith dated December 15, 2015, stating that she suffers from major anxiety disorder; a report from Dr. Clare

Pain dated January 18, 2016, stating that Ms. Aladenika would not be able to address her anxiety disorder, grief issues, or her children's needs if she has to return to Nigeria; a medical document from Havics Hospital & Maternity Home; a redacted RPD decision; and documents concerning country conditions in Nigeria.

[4] The Officer assigned "only some value" to Dr. Keith's report since it did not indicate the length or number of sessions during which Ms. Aladenika was assessed, nor was there evidence that Dr. Keith had arrived at her diagnosis based upon any information other than that provided by Ms. Aladenika. The Officer also assigned "only some value" to Dr. Pain's report, noting that there was no information as to what treatment Ms. Aladenika had undergone before or after the date of the report, nor was there information as to how Dr. Pain came to her diagnosis. More generally, the Officer found there was insufficient evidence to conclude that there had been a change in Ms. Aladenika's mental health since the time of the RPD decision, noting that Ms. Aladenika was employed, she appeared to be able to care for her children, and that there was no evidence counselling services would not be available in Benin City.

[5] After questioning the provenance of the affidavits from Ms. Aladenika's father and from her half-sister, the Officer reviewed their substantive statements and found the following: that the Applicants' persecutors would more likely than not be unable to locate them because they had to repeatedly make inquiries as to their whereabouts; that there was no indication Ms. Aladenika's in-laws had continued to harass her father after April 2015; and that Ms. Aladenika's in-laws had not continued to bother her half-sister after she returned to Benin City following a wedding in Abuja where she had unexpectedly encountered Ms. Aladenika's in-laws. With respect to Ms.

Aladenika's affidavit, the Officer remarked that it was undated and the only information it provided which was not before the RPD and the RAD was a vague statement to the effect that her husband had been attacked after he returned to Nigeria, that her other family members continued to be harassed, and that she had been prescribed medication and was attending counselling. In the absence of further detail or corroboration, the Officer assigned these statements little probative value. As for the two affidavits from the cousin of Ms. Aladenika's husband, Mr. Faneti, the Officer noted they were so badly copied as to be illegible in some places and there was no indication as to how they had come into the Applicants' possession; in the Officer's view, their probative value was "diminished a small amount by these issues." The Officer found that Mr. Faneti's sudden and unexplained reversal on whether his daughter should undergo FGM significantly lessened the probative value of these affidavits.

[6] The Officer then considered a medical report from the Havics Hospital and Maternity Home dated November 5, 2015, detailing the medical complications faced by Mr. Faneti's daughter following a FGM procedure. The Officer found this document had low probative value due to a lack of detail and a discrepancy between the address of the hospital on the form and an address for the hospital which the Officer found by conducting a Google search. Overall, the Officer found that:

> Although Mr. Faneti's information related to the FMG [*sic*] of his daughter has numerous issues, I acknowledge that pursuit by his family from July 2013 to July 2015 may have occurred. Yet, if it did occur, I note that Mr. Faneti is in a different situation than the applicants. He was in continued contact with extended family members who support FGM and he states in his December 2015 affidavit that "of course, a family member who knew where we live would have told them. There is always a Judas in a gathering" (cited verbatim, paragraph 14). Conversely, there is little before me to suggest that the primary applicant has reconciled with her

> husband and there is little evidence that her own family in Edo State have interacted with any of the agents of persecution in about two years. So, although the FGM supporting in-laws may threaten to peruse [*sic*], I find that the totality of the information indicates her husband's family is no longer interested in pursuing the applicants to the extent suggested by counsel.

[7] The Applicants submitted to the Officer a redacted RPD decision concerning applicants who, in the Applicants' view, were "nearly similarly situated" with them, the main difference being that the agents of persecution in that decision were the primary applicant's family, whereas in the Applicants' case they were Ms. Aladenika's in-laws. In assessing this RPD decision, the Officer observed that not only does Ms. Aladenika's husband not support FGM, but no one in her family appears to support it. The Officer also noted that some of Ms. Aladenika's immediate family resided in Benin City and there was little information to suggest that her in-laws have contacted her family since April 2015. The Officer further noted that RPD decisions are not binding and that the RPD decision presented by the Applicants was not persuasive because it did not provide an analysis akin to that in the RPD's decision concerning the Applicants.

[8] The Officer next considered the two-pronged test for an IFA, noting that the test for unreasonableness of an IFA has a very high threshold, and finding that the Applicants had provided insufficient evidence of probative value to suggest there had been sufficient changes in country conditions, or in the Applicants' personal circumstances, since the RAD confirmed the RPD finding of a viable IFA in Lagos and Benin City. The Officer stated there was no indication that the Applicants could not reside temporarily with Ms. Aladenika's father or half-sister, or that they could not access support services, counseling, and education in Benin City. In the Officer's view, the large population in Benin City made it highly unlikely that the Applicants would come

to the attention of their persecutors, and there was little evidence to suggest ethno-religious circumstances had degraded since the RAD decision.

[9] After concluding there was not more than a mere possibility of the agents of persecution being able to locate the Applicants in Benin City, the Officer conducted an analysis of state protection in Benin City. In this regard, the Officer found that while there were problems with human rights, corruption, and FGM in Nigeria, the country is a functioning democracy with a functioning security force which seeks to prevent the practice of FGM. The Officer found the evidence submitted by the Applicants failed to rebut the presumption of state protection in Benin City.

[10] The Officer concluded by acknowledging that, while Ms. Aladenika may have psychological issues and her son has a learning disability, the risk to life under section 97 of the *IRPA* must not be caused by inadequate health care, and that there was no evidence that the Applicants would be denied access to health or medical care due to discrimination amounting to persecution contrary to section 96. Ultimately, the Officer determined that, based on the Applicants' submissions and country condition evidence, the Applicants would face no more than a mere possibility of persecution on a Convention ground if returned to Nigeria, and that there was insufficient evidence to conclude, on balance of probabilities, that they would face danger of torture, a risk to life, or a risk of cruel and unusual treatment or punishment upon return to Nigeria.

II. Analysis

A. *Standards of Review*

[11] It is well-established that, absent any question of procedural fairness, the standard of review by which to assess a PRRA officer's decision is that of reasonableness (see, e.g.: *Koppalapillai v Canada (Citizenship and Immigration)*, 2018 FC 235 at para 13, 289 ACWS (3d) 787). The standard of review to assess a PRRA officer's assessment of new evidence under paragraph 113(a) of the *IRPA* is also that of reasonableness (*Fadiga v Canada (Citizenship and Immigration)*, 2016 FC 1157 at para 8, [2016] FCJ No 1128). Furthermore, determinations on the availability of an IFA are reviewed on the reasonableness standard (*Tariq v Canada (Citizenship and Immigration)*, 2017 FC 1017 at para 14, 285 ACWS (3d) 143); and, as the Court noted in *Lebedeva v Canada (Citizenship & Immigration)*, 2011 FC 1165 at para 32, [2011] FCJ No 1439, determinations concerning an IFA "warrant deference because they involve not only the evaluation of the applicant's circumstances, …but also an expert understanding of the country conditions involved."

[12] The reasonableness standard tasks the Court with reviewing an administrative decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determining "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47, [2008] 1 SCR 190). Those criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and*

Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board), 2011 SCC 62 at para 16, [2011] 3 SCR 708). So long as "the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome"; nor is it "the function of the reviewing court to reweigh the evidence" (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61, [2009] 1 SCR 339 [*Khosa*]). The decision under review must be considered as "an organic whole" and the Court should not embark upon "a line-by-line treasure hunt for error" (*Communications, Energy and Paperworkers Union of Canada, Local 30 v Irving Pulp & Paper Ltd*, 2013 SCC 34 at para 54, [2013] 2 SCR 458).

[13] The standard of review for an allegation of procedural unfairness is correctness (*Mission Institution v Khela*, 2014 SCC 24 at para 79, [2014] 1 SCR 502; *Khosa* at para 43). The Court must determine whether the process followed in arriving at the decision under review achieved the level of fairness required by the circumstances of the matter (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at para 115, [2002] 1 SCR 3). The analytical framework is not so much one of correctness or reasonableness but, rather, one of fairness. In other words, a procedural choice which is unfair will be neither reasonable nor correct, while a fair procedural choice will always be both reasonable and correct. In practice, the Court's inquiry may resemble review for correctness insofar as a court will never defer to a tribunal's action which it deems to be unfair. However, a reviewing court will pay respectful attention to a tribunal's procedural choices and will not intervene except where they fall outside the bounds of natural justice (*Bataa v Canada (Citizenship and Immigration)*, 2018 FC 401 at para 3, [2018] FCJ No 403).

B. *Did the Officer breach Procedural Fairness?*

[14] The Applicants contend that the Officer breached procedural fairness by raising issues about their documentary evidence, including issues with copy quality and the absence of corroborating documentation, without providing them with an opportunity to respond to such issues. According to the Applicants, in conducting a Google search, the Officer consulted sources which were not disclosed to them prior to the decision, and this is a clear breach of procedural fairness sufficient to quash the decision.

[15] The Respondent notes that the onus is on the Applicants to adduce evidence necessary to make their case. According to the Respondent, the Officer simply reviewed the evidence provided by the Applicants and was under no obligation to ask them to clarify or provide additional material. With respect to the Applicants' claim regarding the Officer's Google search for the address of the Havics Hospital, the Respondent says this was not novel or significant evidence, and an officer is entitled to question the veracity of the submitted evidence. The Respondent further says public documents available on the internet which originate from credible and known sources are not extrinsic evidence. In any event, the Respondent argues that the Officer did not assign the Havics Hospital report low probative value based only on the incorrect address, but provided other reasons for discounting it.

[16] In my view, the Officer did not breach procedural fairness or otherwise unfairly assess the evidence provided by the Applicants. The Officer was entitled to identify shortcomings in the evidence. The reasons are clear that the Officer conducted a detailed assessment of the evidence

submitted in support the Applicants' PRRA application. Moreover, the Officer's Google search for the address of the Havics Hospital was not unfair to the Applicants; this information was publicly available and did not amount to significant or novel extrinsic evidence upon which the Officer relied in rendering his or her decision. The jurisprudence is clear that publicly available information is not extrinsic evidence so long as it is not novel (*Jiminez v Canada (Citizenship and Immigration)*, 2010 FC 1078 at para 19, 194 ACWS (3d) 1242; *Holder v Canada (Citizenship and Immigration)*, 2012 FC 337 at para 28, 213 ACWS (3d) 182; *Mancia v Canada (Minister of Citizenship and Immigration)*, [1998] 3 FC 461 at para 11, [1998] FCJ No 565 (FCA)).

C. *Is the Officer's Decision Reasonable?*

[17] The Applicants assert that the Officer made several errors in assessing the evidence which, cumulatively, render the decision unreasonable. According to the Applicants, the Officer erred in concluding that Mr. Faneti's family members located him in Lagos because he shared his location with "Judases" within his family. The Applicants contend that Mr. Faneti said he did not know how his family members located him in Lagos, pointing to a statement in his December 2015 affidavit where he states with respect to his family members who stormed his home in Lagos: "I didn't know how they knew where we lived." In the Applicants' view, if Mr. Faneti could be located by his family in Lagos, this shows that the same family have the resources and connections to locate the Applicants wherever they go in Nigeria. Additionally, the Applicants say the Officer unreasonably impugned the affidavits of Ms. Aladenika's father and her half-sister because of poor copy quality or lack of photo identification.

[18] With respect to the IFA locations of Benin City and Lagos, the Applicants contend that the Officer did not conduct an independent assessment but instead merely repeated the findings of the RPD. According to the Applicants, their lack of education, work experience and connections to persons in power, coupled with Ms. Aladenika's status as a single mother, would make life in the proposed IFAs punitively difficult. In the Applicants' view, Ms. Aladenika's mental health issues and her son's learning disability are such that they will not be able to freely access public services out of fear of being located by the agents of persecution.

[19] Lastly, the Applicants maintain that the Officer unreasonably assigned low probative value to the psychological reports of Dr. Keith and Dr. Pain because they relied on information provided by Ms. Aladenika. According to the Applicants, it was not necessary for the doctors to have an objective account of conditions in Nigeria to reach a conclusion on the psychological consequences of removal, and it was unreasonable for the Officer to make veiled credibility findings about the information provided to the doctors by Ms. Aladenika. Ultimately, the Applicants argue that the psychological evidence shows Ms. Aladenika is at risk of a psychological breakdown far beyond the "natural distress" associated with removal, and therefore her ability to care for her children will be at risk.

[20] The Respondent says the Applicants ignore the Officer's reasoning, which acknowledged Mr. Faneti's situation but found that the Applicants were differently situated, and notes that Mr. Faneti stated he had been located by his persecutors because he had shared his location with members of his family. The Respondent further notes that the Officer reasonably found little evidence that the Applicants' family members had not been harassed or otherwise contacted by

Ms. Aladenika's in-laws since April 2015. According to the Respondent, the Officer was under no obligation to solicit better-quality copies or identifying information with respect to the affidavits from Ms. Aladenika's father and her half-sister, and in any event, the Officer considered the substance of these affidavits despite these issues.

[21] The Respondent maintains that the Officer reasonably conducted an independent assessment of the IFA in Benin City, finding that there was little reason the Applicants could not rely on their own family members for assistance and that Ms. Aladenika's mental health and her son's learning disability were insufficient to overcome the IFA. In the Respondent's view, it was reasonable for the Officer to find that the large population of Benin City made it unlikely the Applicants would encounter their persecutors and that there was little evidence to suggest that ethno-religious circumstances had changed since the RAD decision.

[22] Lastly, with respect to the psychological assessments, the Respondent maintains that the Officer accepted the doctors' findings about Ms. Aladenika's mental health, but assigned limited weight to the other statements in the reports. The Respondent acknowledges that this case was not about the Applicants' credibility, but argues that the Officer reasonably found there was no new evidence to overcome the RPD's finding that Ms. Aladenika could access counselling services in Benin City. In view of that finding, the Respondent says it was reasonable for the Officer to conclude that Ms. Aladenika's mental illness would not compromise her ability to relocate.

[23] In my view, the Officer did not, as the Applicants contend, err in concluding that Mr. Faneti's family members located him in Lagos because he shared his location with "Judases" within his family. Immediately after where Mr. Faneti states he did not know how his family members who stormed his home in Lagos knew where he lived, he continues on to say: "But of course, a family member who knew where we lived would have told them." The Officer made no error in this regard, and the Applicants' contention that Mr. Faneti said he did not know how his family members located him in Lagos is without foundation in the face of the statement in his affidavit that a family member would have told members of his family who support FGM where he lived in Lagos.

[24] Moreover, it was not unreasonable for the Officer to consider the poor quality and lack of identifying information in the affidavits of Ms. Aladenika's father and half-sister as factors which lessened their probative value because the reasons for the decision clearly show the Officer also engaged with the substantive content of these affidavits. The cases relied upon by the Applicants in this regard (i.e., *Ouya v Canada (Citizenship and Immigration)*, 2017 FC 55 at para 17, 276 ACWS (3d) 420, and *Adaramasha v Canada (Minister of Citizenship and Immigration)*, 2005 FC 1529, 143 ACWS (3d) 1083) do not assist the Applicants. Those cases dealt with situations where the Court determined that documents had been unreasonably rejected solely on the basis that they lacked identifying information or were illegible, which is not what the Officer in this case did in assessing the affidavits of Ms. Aladenika's father and half-sister.

[25] As to the assessment of the evidence about Ms. Aladenika's mental health, the Officer in this case did not run afoul of jurisprudence in this Court where psychological evidence was

dismissed solely because it relied upon information from an applicant. This Court has determined that psychological evidence can be central to the reasonableness of a proposed IFA (see, e.g.: *Cartagena v. Canada (Citizenship & Immigration)*, 2008 FC 289 at para 11, 165 ACWS (3d) 899; *Okafor v Canada (Citizenship and Immigration)*, 2011 FC 1002 at para 13, 206 ACWS (3d) 167; and *Olalere v Canada (Citizenship and Immigration)*, 2017 FC 385 at para 51, 279 ACWS (3d) 615). This Court has also found that it is unreasonable to afford little weight to a psychological report solely on the basis that the events it describes were not based on firsthand knowledge of the psychologist and that it is an error to reject expert psychological evidence without basis (see: *Lainez v Canada (Citizenship and Immigration)*, 2012 FC 914 at para 42, 218 ACWS (3d) 408; see further *Kanthasamy v Canada (Citizenship and Immigration)*, 2015 SCC 61 at para 49, [2015] 3 SCR 909).

[26] In this case, the Officer did not dismiss the psychological evidence because it relied on information provided by Ms. Aladenika. Although the Officer assigned the psychological reports "only some value," the Officer did not dismiss them entirely. On the contrary, the Officer considered the totality of the evidence as to Ms. Aladenika's mental health, including a letter dated November 6, 2013, which had been before the RPD, stating in relevant part that: she "suffers from a great deal of anxiety at the possibility of her request for asylum being turned down… She has been prescribed anti-depressants as a result of the emotional difficulties she has been experiencing [and] has significant issues around depression and self-esteem". The Officer noted that the RPD had found there were counselling services in Benin City and found there was little new evidence to suggest that this did not continue to be the case. In my view, the Officer's

assessment of the psychological evidence in this case was intelligible, justifiable, transparent and, consequently, reasonable.

III. Conclusion

[27] The Officer's reasons for refusing the Applicants' PRRA application are intelligible, transparent, and justifiable, and the decision falls within a range of possible, acceptable outcomes defensible in respect of the facts and law. The Applicants' application for judicial review is therefore dismissed.

[28] Neither party proposed a serious question of general importance to be certified under paragraph 74(d) of the *IRPA*; so, no such question is certified.

JUDGMENT in IMM-4333-17

THIS COURT'S JUDGMENT is that: the application for judicial review is dismissed, and no serious question of general importance is certified.

"Keith M. Boswell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4333-17
STYLE OF CAUSE:	IYOBOSA ALADENIKA, ELIZABETH ALADENIKA (a minor), GODWIN ALADENIKA (a minor) v THE MINISTER OF CITIZENSHIP AND IMMIGRATION
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MAY 8, 2018
JUDGMENT AND REASONS:	BOSWELL J.
DATED:	MAY 18, 2018

APPEARANCES:

Kingsley I. Jesuorobo	FOR THE APPLICANTS
Alex Kam	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Kingsley I. Jesuorobo Barrister and Solicitor North York, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT